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Supreme Court, U. S.

FILED

JUN 26 1972

MICHAEL ROBAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. 71-1336

IN RE APPLICATION OF FREDERICK POOLS GRIFFITHS
FOR ADMISSION TO THE BAR,

Appellant.

ON APPEAL FROM THE SUPREME COURT OF CONNECTICUT

APPENDIX

IN THE
Supreme Court of the United States

OCTOBER TERM 1971

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IN RE APPLICATION OF FRE LE POOLE GRIFFITHS
FOR ADMISSION TO THE BAR

ON APPEAL FROM THE SUPREME COURT OF CONNECTICUT

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Chronological List of Relevant Docket Entries

- May 27, 1970— Petition filed in Superior Court, New Haven, Connecticut. Order to show cause issued and served.
- September 14, 1970— Appearance filed by State Bar Examining Committee.
- September 15, 1970— Petitioner files Request for Admission of Documents, being Exhibits A through N.
- October 5, 1970— Petitioner files Notice of Exhibit.
- December 21, 1970— Superior Court files Memorandum of Decision and enters Judgment.
- December 30, 1970— Petitioner files Appeal and Assignment of Errors.
- February 11, 1971— Record from Superior Court filed in Supreme Court of Connecticut.
- February 15, 1972— Opinion and Judgment of Connecticut Supreme Court filed.
- February 18, 1972— Notice of Appeal to Supreme Court of United States filed.
- April 17, 1972— Jurisdictional Statement filed.
- June 7, 1972— Probable Jurisdiction Noted

Petition

(Filed May 27, 1970)

SUPERIOR COURT**NEW HAVEN COUNTY****May 22, 1970**

**In re: application of FRE LE POOLE GRIFFITHS
for admission as an Attorney.**

To the Honorable Superior Court of the State of Connecticut, County of New Haven:

You petitioner, Fre Le Poole Griffiths, an applicant for admission as attorney in the State of Connecticut, alleges:

- 1. That she is a resident and taxpayer of the Town of New Haven, County of New Haven, State of Connecticut.**
- 2. Except as set out below, that she has complied with all of the rules of this Court regulating the admission of applicants to the Connecticut Bar.**
- 3. That on or about March 2, 1970, she did file with the Clerk of Superior Court for New Haven County a Notice of Intention and Application for admission as attorney, and she did pay the necessary fee to the Clerk of the Superior Court.**
- 4. That the application for admission as an attorney was incomplete in that no affidavit was filed that the applicant was a citizen of the United States.**

5. That the petitioner hereby refers to and incorporates by reference herein as if fully set forth, all papers now on file in the office of the Clerk of this Court in support of petitioner's application for admission to the Bar of this State.

6. That the Standing Committee on Recommendations for Admission to the Bar of New Haven County, on or about May 4, 1970, interviewed the petitioner and reviewed her application, and received evidence of her intention to practice law in Connecticut, and, subsequently found that the petitioner had failed to comply with the rules of the Superior Court relating to admission to the Bar in the State of Connecticut, and recommended to the Bar of New Haven County, that the petitioner be denied such admission to practice in this State.

7. That at the meeting of the Bar of New Haven County, held in the Courthouse in New Haven, on May 22, 1970, the report of the aforesaid Standing Committee on Recommendations for admissions to the Bar, denying admission to the Petitioner to said Bar was duly presented to the members of the Bar of New Haven County then present and the members of said Bar voted to accept the report of the Standing Committee on admissions denying Petitioner's Application, and duly confirmed the same.

8. That at the meeting of the Bar mentioned above, a Motion to Admit the Petitioner notwithstanding the recommendation of the Standing Committee was defeated.

9. That the Standing Committee on Recommendations for Admission to the Bar of the State of Connecticut of New Haven County, above referred to, and the Bar of New

Haven County, confirming said report and denying the application of the petitioner to be admitted to the Bar of the State of Connecticut, did deny said petition because of the fact that the petitioner did not meet the requirements pertaining to United States Citizenship, as set forth in Rule 8(1) of the Rules of the Superior Court.

10. That Rule 8(1) of the Rules of the Superior Court requires that a petitioner be a citizen of the United States.

11. The petitioner is not a citizen of the United States, and is a citizen of the Netherlands.

12. The petitioner is being denied the right to take the Bar examination, and denied the right for admission to the Bar on the ground that she is not a citizen of the United States.

13. This is an appropriate case for the Superior Court to use its inherent power to waive Rule 8(1) in order to avoid injustice to petitioner.

14. Rule 8(1) of the Superior Court Rules discriminates unreasonably against aliens situated as is petitioner, depriving them thereby of their constitutional right to equal protection.

a) Superior Court Rule 8(1) is to be subjected to a strict standard of review, and the presumption is against its validity.

b) All forms of discrimination against aliens as a class which had once been upheld have been struck down when reconsidered more recently.

c) Rule 8(1) unreasonably discriminates against aliens.

15. Superior Court Rule 8(1) interferes with the federal power over immigration.

16. Superior Court Rule 8(1) as applied to petitioner, violates international public policy and the First Amendment of the United States Constitution by burdening petitioner's right freely to determine her nationality.

Wherefore, your petitioner respectfully prays for a hearing on her Petition and that this Honorable Court will decree that the Petitioner be admitted to take the examination as a candidate for the Bar of the State of Connecticut and of New Haven County, and that she be declared eligible as for admission to the Bar of the State of Connecticut and County of New Haven, and that she has such other further relief as the Court may deem just and necessary.

The Petitioner

By DAVID BROILES

JACOBS, JACOBS, GRUDBERG
& CLIFFORD

Her Attorneys

(Filed: May 27, 1970.)

Order to Show Cause**(May 27, 1970)**

The petition for review of Fre Le Poole Griffiths from the action of the Standing Committee on Recommendation for Admission to the Bar of New Haven, Connecticut, having come on for a hearing before the Court on May 26, 1970, and it appearing to the Court that the Standing Committee on Recommendations for Admission to the Bar of New Haven County should be notified of the petition for review, Now Therefore,

It Is Ordered, That a true copy of the petition for review, as on file in the Superior Court for New Haven County, and a copy of this order be served on Curtiss K. Thompson, Esq., the Chairman of said Standing Committee, on or before May 27, 1970, and It Is

Further Ordered, That the Standing Committee on Recommendations for Admission to the Bar of New Haven County show cause, if any they have, why said petition for review should not be granted, before the Special Calendar Session of this Court to be held on Thursday, May 28, 1970 at 10:00 a.m., and

It Is Further Ordered, That return of service of said copy of said petition for review and of this order be made by the officer serving the same on or before May 27, 1970.

By the Court

BOGDANSKI, Judge

Order

(July 10, 1970)

The foregoing petition of Fre Le Poole Griffiths for admission to take the examination as a candidate of the Bar of the State of Connecticut in New Haven County and asking that she be declared eligible for admission to such Bar having come on for a hearing before this Court and such petitioner having appeared by her counsel and the Committee on Recommendations for Admission to the Bar of New Haven County by its Chairman and it appearing to the Court that further notice of the pendency of such application should be given so that all members of the Bar of this Court, the Bar Examining Committee and the Attorney General of the State of Connecticut will be notified of the pendency of such application and allowed to appear in the proceedings thereon to assert any interest that they may have therein,

Now, THEREFORE, and with the consent of the parties who have appeared, it is hereby,

ORDERED that on or before the 1st day of August, 1970, the petitioner shall cause:

.

2. true copies of such petition and of this order to be sent via certified mail, postage prepaid, to the Honorable Robert K. Killian, Attorney General, State Capitol, Hartford, Connecticut, and to Harry L. Nair, Esquire, Chairman of the Bar Examining Committee of the State of Connecticut, 111 Pearl Street, Hartford, Connecticut.

AND IT IS FURTHER ORDERED that any individual, public official, committee or association having an interest in the foregoing petition and the proceedings to be held thereon may appear herein on or before the first Tuesday of September, 1970 and within 15 days thereafter file such answer or other pleading as it deemed appropriate with respect to such petition.

Dated at New Haven, Connecticut, this 10th day of July, 1970.

By The Court

BOGDANSKI, Judge

Request for Admission of Documents

(Filed September 15, 1970)

Because the applicant believes there exists no dispute concerning the facts, and in order to indicate to all parties the exhibits to be offered by the applicant, and pursuant to Section 177 of the Practice Book, the applicant annexes hereto all exhibits to be offered at the trial on September 24, 1970, and calls upon all parties to admit the existence and admissibility of exhibits, and if any objection will be made to any exhibit to make the objection known to counsel for the applicant prior to the hearing on September 24, 1970.

Exhibit A—Copy of Section 8, *Connecticut Practice Book*

Exhibit B—Application for admission to the Bar, March 2, 1970, with supporting documents, original on file, Superior Court, New Haven County.

Exhibit C—Transcript of hearing before Committee on Recommendations, Re: Fre Le Poole Griffiths, May 4, 1970.

Exhibit D—Letter, May 6, 1970, from Committee on Recommendations for Admission, indication application not approved because of citizenship requirement.

Exhibit E—Request for Certification Made May 22, 1970 at Meeting of New Haven County Bar meeting.

Exhibit F—Transcript of Bar Meeting, New Haven County, May 22, 1970.

Exhibit G—Affidavit verifying Application in case No. 123738, In re Application of Fre Le Poole Griffiths.

Exhibit H—Certified letter of Notice to Hon. Robert K. Killian with return receipt. (July 10, 1970)

Exhibit I—Certified letter of Notice to Harry Nair, Esq. with return receipt. (July 10, 1970)

Exhibit J—Certified letter of Notice to Donald Dowling, Esq., with return receipt. (July 10, 1970)

Exhibit K—Certified letter on Notice to Joseph J. Keefe, Esq., with return receipt. (July 10, 1970)

Exhibit L—Letter from Joseph Keefe and Donald Dowling, July 22, 1970.

Exhibit M—Letter to Commission on Official Legal Publication July 29, 1970

Exhibit N—The Attorney's Oath.

The Applicant

By DAVID BROILES

**JACOBS, JACOBS, GRUDBERG &
CLIFFORD**

Her Attorneys

(Filed: Sept. 15, 1970.)

Notice of Exhibit

(Filed October 5, 1970)

Annexed hereto, and subject to objection on the part of any party, the petitioner submits to the Court Exhibit Q, and asks the Court to take judicial notice of the provisions contained therein, and to make Exhibit Q a part of the record.

The Petitioner

By DAVID BROILES

**JACOBS, JACOBS, GRUDBERG &
CLIFFORD**

Her Attorneys

(Filed: Oct. 5, 1970.)

Exhibit A**Copy of Section 8, Connecticut Practice Book****Sec. 8. Qualifications for Admission**

To entitle an applicant to admission to the bar, except under Sec. 12 of these rules, he must satisfy the committee.

First: That he is a citizen of the United States.

Second: That he is a resident of this state or intends to become such resident.

Third: That he is not less than twenty-one years of age.

Fourth: That he is a person of good moral character.

Fifth: That he has complied with the following rules concerning prelaw education: (A) If his law studies pursuant to the rules commenced prior to January 1, 1951, before commencing the study of law he (1) has graduated from a college the standing of which and the course or courses taken by the applicant shall be approved by the committee; or (2) has registered as a regular student or candidate for a degree in a college the standing of which shall be approved by the committee, and has attended and successfully completed courses acceptable to the committee constituting one-half of the work required for a degree in such college. (B) If his law studies pursuant to the rules commenced after January 1, 1951, before commencing the study of law he (1) obtained a bachelor's degree for acceptable undergraduate work in residence at a college accredited by

the committee; or (2) completed, in residence at a college accredited by the committee, ninety semester or one hundred thirty-five quarter hours of college credit acceptable toward a bachelor's degree at such college and acceptable to the committee; provided that in such event a bachelor's degree must have been obtained at a college accredited by the committee before a law degree is obtained; or (3) obtained a master's degree for post-graduate work acceptable to the committee in residence at a college accredited by the committee, having already obtained a bachelor's degree for acceptable undergraduate work in residence at a college.

Sixth: That he has complied with the following rules concerning his legal education: After arriving at the age of eighteen years and after having completed his prelaw education as provided for under subsection *Fifth* of this section, he has (a) pursued the study of law as a regular law student in residence at and obtained a bachelor of laws degree from a law school accredited by the committee; or (b) obtained a master of laws degree for postgraduate work acceptable to the committee in residence at a law school accredited by the committee, having already obtained a bachelor of laws degree at a law school for work acceptable to the committee done in residence at such law school.

Seventh: That he has registered his intention to study law in preparation for taking the bar examinations in accordance with these rules and the regulations of the committee and has paid a registration fee of \$10.

Eighth: That he has filed with the clerk of the superior court his application to take the examination and for admission to the bar, all in accordance with these rules and

the regulations of the committee, and has paid an application fee of \$25.

Ninth: That he has satisfactorily passed an examination in law in accordance with the regulations of the committee.

Tenth: That he has complied with all of these rules and the regulations of the committee pertinent to his application.

(P. B. 1951, Sec. 4; 1963.)

Exhibit B

Application for Admission to the Bar

March 2, 1970

Clerk of the Superior Court for
New Haven County
121 Elm Street
New Haven

Dear Sir,

Enclosed please find my application for admission to the bar, as well as the necessary additional documents and a \$35.-check. I have asked for, but not yet received, a certificate of graduation from the Yale Law School. I will send this to you, as soon as I receive it.

As you will see, my answer to question 8 is negative and, consequently, I cannot submit an affidavit of citizenship. I am aware of Superior Court Rule 8, first. I request you to process my application as usual, nevertheless, since I intend to request the Character Committee and the Court to waive the citizen requirement on the ground that it would be unreasonable and unconstitutional to apply it to a person in my situation.

Sincerely yours,

/s/ FRÉ LE POOLE GRIFFITHS (Mrs.)
Fré Le Poole Griffiths

118 Mansfield Street
New Haven, Conn. 06511

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Exhibit C

**Transcript of Hearing Before Committee on
Recommendations**

NEW HAVEN BAR ASSOCIATION

RE: FRE LE POOLE GRIFFITHS

May 4, 1970

(Applicant not present in hearing room.)

Mr. McGrail: Do you want me to read this into the record?

Chairman Curtiss: Read it to us.

(Letter from applicant's attorney read.)

Mr. McGrail: Accompanying this, and I don't know what significance this has—this is in Dutch—are two certificates, one from the University of Lyden and the other one from the University of Amsterdam, Faculty of Law. And she is about to become a Yale law graduate.

Mr. Emanuelson: What are her college courses?

Mr. McGrail: This is the same problem that I ran into with this other English fellow. They give a list of courses that don't exactly conform with Vasar. But as close as I can tell, that is her college certificate. And this is from her law school over there.

(The applicant thereupon entered the hearing room.)

Chairman Curtiss: Mr. Donahue, a member of the Committee will address some questions to you.

I might say that the Committee is familiar with the letter that was written by your counsel.

Examination by Mr. Donahue:

Q. Is your name Miss or Mrs. Griffiths? A. Mrs. Griffiths.

Q. Where do you live? A. 118 Mansfield Street, New Haven.

Q. For how long a period of time have you lived there? A. Since the summer of 1967.

Q. What does your family consist of? A. My parents and three brothers and one sister.

You mean my family now here? My husband and me.

Q. What does your husband do? A. He is teaching at the Yale Law School.

Q. And you apparently were educated in Europe, is that correct? A. I was educated both in Europe and here. My law degree is from Yale Law School.

Q. Do you have one or will you get one? A. I received an LLB from Yale last June.

Q. June of 1969? A. Right.

Q. And since June of 1969 up until the present time, what have you been doing? A. I was a law clerk at the Legal Aid Bureau since October of 1969.

Q. Are you a citizen of the United States? A. No, I am not.

Q. Is your husband? A. My husband is a citizen.

Q. And what plans do you have with respect to your future? A. Well, I would like to go on working for New Haven Legal Assistance.

Q. And does your ability to work for the New Haven Legal Assistance depend upon your becoming a member of

the Connecticut Bar? A. Well, eventually it will be very difficult to go on working there if I would not become a member of the Bar.

Q. Does your ability to continue to hold the job you are holding now depend upon your being a member of the Connecticut Bar? A. Being a law clerk is something that is a good thing to do for a while to learn about what it is to be a lawyer. But I don't think it is the kind of job that one could hold for a lifetime.

Q. Mrs. Griffiths, I will try the question again. It is susceptible to a yes or no answer. See if you can contain your answer to one word, please.

Does your ability to hold and maintain the job that you now have at the New Haven Legal Assistance Bureau depend upon your being a member of the Connecticut Bar? A. I think the answer to that is no.

Mr. Secor: Do you intend to become a citizen of the United States?

The Witness: I have no present plans to become a citizen of the United States.

Mr. Luby: Of what country are you a citizen?

The Witness: Holland.

Mr. Donahue: I have no further questions.

Mr. Luby: Have you ever been arrested?

The Witness: No.

Mr. Luby: You never even got a speeding ticket?

The Witness: No.

Chairman Curtiss: How long did you say you have been a resident of Connecticut?

The Witness: Since the summer of 1967.

Chairman Curtiss: Were you married at that time?

The Witness: Yes, I was married in July of '67.

Chairman Curtiss: That is you came to Connecticut because your husband received an appointment to teach in the Law School?

The Witness: Correct.

Chairman Curtiss: And another requirement is that you must be twenty-one years of age or more, isn't it?

The Witness: I am more than twenty-one.

Chairman Curtiss: Is there any blemish on your moral character at all?

The Witness: Not that I know of.

Chairman Curtiss: Now these colleges that you graduated from, you had the equivalent of a Bachelor's degree from the University of Amsterdam?

The Witness: The equivalent of an LLB. I had the equivalent of a Bachelor's degree of the University of Lyden and the equivalent of an LLB of the University of Amsterdam.

Chairman Curtiss: Now at sometime you must have registered for the exams, the Bar exams—that is, you registered your intention to study law in preparation for the exam. Did you do that?

The Witness: Yes.

Chairman Curtiss: And when was that done?

The Witness: I filed that at the same time as I filed the application for admission to the Bar exams.

Chairman Curtiss: When?

Mr. McGrail: March 4th.

Chairman Curtiss: And when you filed your application you knew that a prerequisite for admission was citizenship?

The Witness: Yes.

Chairman Curtiss: And at this time you have no present intention of becoming a citizen of the United States?

The Witness: That is correct.

Chairman Curtiss: Is that right?

The Witness: Yes.

Chairman Curtiss: Are there any other inquiries?

By the way, is that citizenship a part of the statute or a rule?

Mr. McGrail: I think it is a matter of statute. I will have to check it though.

Mr. Secor: Have you checked it?

The Witness: It is a court rule.

Mr. McGrail: It is Rule 8, Superior Court.

The Witness: I think it is a court rule.

Mr. Secor: Is it a court rule?

The Witness: I believe there is a statute on it.

Chairman Curtiss: As I understood your counsel's letter, he thought this Committee should waive that rule under the circumstances of this case.

Do you take the position that this Committee has the right to waive that requirement?

The Witness: As far as I understand it, it doesn't.

Mr. Luby: Do you know whether or not a United States citizen can be admitted to practice law in Holland?

The Witness: I don't know.

Mr. Luby: Have you examined the treaty between Holland and the United States in relation to these matters?

The Witness: Yes.

Mr. Luby: And what is the result?

The Witness: I do not think the treaty assures any rights to people who exercise their profession in their country.

Mr. Emanuelson: You mean in Holland?

The Witness: I don't think Holland and the United States have agreed that when somebody is a lawyer in Holland he is entitled to practice law in the United States or the other way around.

Chairman Curtiss: When did you come to the United States?

The Witness: I came to the United States in January of '65.

Chairman Curtiss: Were you married at that time?

The Witness: No.

Chairman Curtiss: Did you come as an immigrant?

The Witness: I was a visitor originally.

Chairman Curtis: And you were married while you were on a visitor's passport?

The Witness: No, I had found work here; and I had already become a resident when I got married.

Mr. Secor: What did you say your husband does?

The Witness: He is teaching?

Mr. Secor: What?

The Witness: Mainly criminal law; also torts. And he has taught various seminars.

Mr. Secor: Did you take any courses under him?

The Witness: No, I carefully avoided that.

Chairman Curtiss: You are going to remain a clerk for some time in the Legal Aid until you get this matter settled, aren't you?

The Witness: Well, in fact I will stop working there since I am going to have a baby in July.

Chairman Curtiss: Are you looking up something, Jack?

Mr. McGrail: Yes. This is as far as it goes. There are no citations, no statutory citations.

Chairman Curtiss: All of the details of her application have been perfected?

Mr. McGrail: As far as I know.

The only question I have is with respect to the college situation. But I wouldn't think in view of the fact that she has an LLB from over there that it would present any problem.

The last one that we referred to the Bar Examining Committee because of the fact the law degree was over there.

Mr. Donahue: What degree do you hold from Yale?

The Witness: An LLB.

Mr. McGrail: Did they do anything with respect to your credits when you applied to Yale?

The Witness: They gave me the equivalent of one year's credit for one legal education in Europe.

Mr. Secor: And your parents are lawyers, is that correct?

The Witness: Yes.

Chairman Curtiss: Is it the consensus of the Committee that we do not have the right to waive the requirement of citizenship? I think it ought to go on the record.

Mr. Donahue: I feel we do not.

Mr. Emanuelson: Likewise.

Mr. Secor: I don't think we have any right to waive it.

Mr. Luby: I don't think so either.

Chairman Curtiss: The Chair feels the same way.

And we regret very much that we are unable to grant your application.

Mr. Secor: The applicant apparently doesn't feel we have the right to either.

The Witness: From the cases at least as I understand them, I am sorry to say so.

Chairman Curtiss: Who is your counsel in this matter?

Mr. McGrail: David Broils from Jacobs, Jacobs, Grudberg and Clifford. Counsel have indicated:

"If there is no other finding by the Committee, the Committee should state the exact reason for denying this applicant's right to take the Bar.

"Would it be appropriate as far as this Committee is concerned to have it in the report that way?"

Chairman Curtiss: Have it appear in our report, the reason for which it was denied.

You are not making any claim that your counsel should be present at this meeting, are you?

The Witness: I understand that it is not usual for counsel to be present.

I have no objection to that.

Chairman Curtiss: Are you asking that he be allowed to attend?

The Witness: At this—?

Chairman Curtiss: Hearing.

The Witness: No, I think not.

Mr. Secor: You are waiving your rights?

The Witness: It sounds very dangerous.

Chairman Curtiss: Well, I think we may excuse you.

Thank you.

(The applicant thereupon left the hearing room.)

Chairman Curtiss: I take it the motion is that her application be denied on the ground that she is not a citizen of the United States. And that in other respects the Committee finds she is qualified.

Mr. McGrail: Do you think we should have a couple of copies of the transcript made up?

Chairman Curtiss: Yes.

Exhibit D

**Letter From Committee on Recommendations
for Admission**

(Letterhead of Committee on Recommendations for Admission to the Connecticut Bar, New Haven County)

May 6, 1970

Mrs. Fre Le Poole Griffiths
118 Mansfield Street
New Haven, Connecticut, 06511

Dear Mrs. Griffiths:

In view of the fact that you do not meet the requirement pertaining to United States Citizenship, your Application to take the June Bar Examination has not been approved.

Very truly yours,

/s/ JOHN R. McGRAIL
John R. McGrail, Secretary

Exhibit E**Request for Certification****SUPERIOR COURT****NEW HAVEN COUNTY****May 22, 1970**

**IN RE APPLICATION OF FRE LE POOLE GRIFFITHS
FOR ADMISSION AS AN ATTORNEY**

The applicant Fre Griffiths requests that the court reject the report of the Committee on Recommendation For Admission to The Connecticut Bar, New Haven County and certify the application of Fre Griffiths for permission to take the June examination for the following reasons:

1. the applicant is being rejected on the grounds that she is not a citizen of the United States.

2. This is an appropriate case for the Superior Court to use its inherent power to waive Rule 8(1) in order to avoid injustice to petitioner.

3. Rule 8(1) of the Superior Court Rules discriminates unreasonably against aliens situated as is petitioner, depriving them thereby of their constitutional right to equal protection.

a) Superior Court Rule 8(1) is to be subjected to a strict standard of review, and the presumption is against its validity.

b) All forms of discrimination against aliens as a class which had once been upheld have been struck down when reconsidered more recently.

c) Rule 8(1) unreasonably discriminates against aliens.

4. Superior Court Rule 8(1) interferes with the federal power over immigration.

5. Superior Court Rule 8(1) as applied to petitioner, violates international public policy and the First Amendment of the United States Constitution by burdening petitioner's right freely to determine her nationality.

THE APPLICANT

By:

JACOBS, JACOBS, GRUDBERG & CLIFFORD

R. DAVID BROILES, *Her Attorney*

Exhibit F

May 22, 1970

**MEETING OF
THE NEW HAVEN COUNTY
BAR ASSOCIATION**

held at

**The County Court House
New Haven, Connecticut**

Reported by:

**Charles H. Dukes
Court Reporter**

Mr. Emanuelson: . . . The last application not being recommended by the Committee is that of Fraila Poole Griffiths. She is not a citizen of the United States, and does not qualify for a candidate for the examination on that basis. With these deletions, Mr. Chairman, I would recommend that the report of the Committee be approved.

Mr. Hadden: The report of the Committee with a remark?

Mr. Broiles: Mr. Chairman, my name is David Broiles. I am the attorney for Fraila Poole Griffiths who has been rejected by the Committee for not being a citizen of the United States. I would point out that Rule 81 of the Rules of the Superior Court requires an affidavit of citizenship and, of course, that a person be a citizen. I ask that that rule be waived by this Committee and that Mrs. Griffiths be

certified for the taking of the examination in June, and I have a written application for that, if I might give that to you to be put in her file.

Mr. Emanuelson: If I might remark with regard to counsel in support of her application that a waiver be granted, this matter was known by the Committee on admissions at the time that we held our hearing. She appeared and she indicated that she is not a citizen of the United States, and that she has no present intention of becoming a citizen of the United States, and in view of the rule, the Committee felt it could not waive the application requested, and recommends that her application be denied on the basis that she is not a citizen of the United States and she was so advised, as was her counsel.

Mr. Broiles: Correct.

Mr. Hadden: Will you restate your Motion so I can put it to a vote.

Mr. Boiles: Fraila Griffiths be certified for the June examination, even though she is not a citizen of the United States, and does not intend to become a citizen of the United States.

Mr. Hadden: All those in favor of the Motion voting to overrule the Committee's decision will signify by saying "I".

(Oral vote taken)

Mr. Hadden: Contrary minded?

(Oral vote taken)

Mr. Hadden: Motion is denied. Question now is on the acceptance of the Committee's Report. Is there any remarks?

Mr. Horwitz: I move that the Committee Report be accepted.

A Voice: I second the motion.

Mr. Hadden: The Committee's Report is adopted.

Mr. Emanuelson: You may adjourn the hearing.

Mr. Hadden: The motion is in order. The meeting stands adjourned.

• • •

Exhibit G

AFFIDAVIT

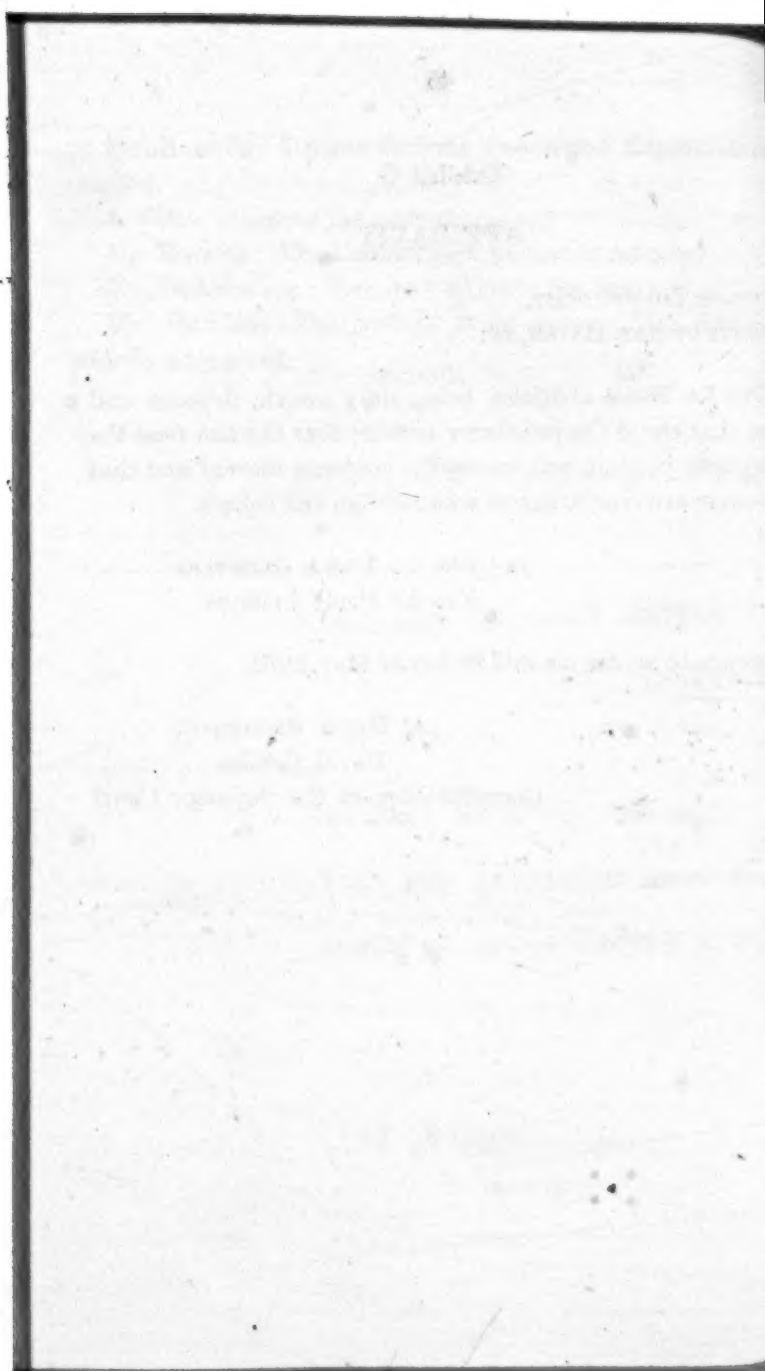
STATE OF CONNECTICUT,
COUNTY OF NEW HAVEN, ss:

Fre Le Poole Griffiths, being duly sworn, deposes and says that she is the petitioner herein; that she has read the foregoing petition and knows the contents thereof and that the same are true to her own knowledge and beliefs.

/s/ FRE LE POOLE GRIFFITHS
Fre Le Poole Griffiths

Sworn to before me this 28 day of May, 1970.

/s/ DAVID BROILES
David Broiles
Commissioner of the Superior Court



Supreme Court of the United States

No. 71-1336

**In re application of Fre Le Poole
Griffiths for Admission to the Bar,
Appellant.**

**APPEAL from the Supreme Court of the State of
Connecticut.**

**The statement of jurisdiction in this case
having been submitted and considered by the Court,
probable jurisdiction is noted.**

June 7, 1972

71-1336

APR 17 1972

IN THE

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM, 1971

No.

In Re Application of FRE LE POOLE GRIFFITHS,
for Admission to the Bar

Appellant.

ON APPEAL FROM THE SUPREME COURT OF THE STATE
OF CONNECTICUT

JURISDICTIONAL STATEMENT

R. DAVID BROILES
HOOPER, KERRY & CHAPPELL
200 Fort Worth Club Bldg.
Fort Worth, Texas 76102

MELVIN L. WULF
JOEL M. GORA
American Civil Liberties Union
Foundation
156 Fifth Avenue
New York, New York 10010

Attorneys for Appellant

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The following is a list of the names of the persons who have been admitted to the membership of the Society since the last meeting. The names are given in alphabetical order of their surnames. The names of the persons who have been admitted to the membership of the Society since the last meeting are given in alphabetical order of their surnames. The names of the persons who have been admitted to the membership of the Society since the last meeting are given in alphabetical order of their surnames.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No.

In Re Application of FRE LE POOLE GRIFFITHS,
for Admission to the Bar

Appellant.

ON APPEAL FROM THE SUPREME COURT OF THE STATE
OF CONNECTICUT

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of Connecticut, entered on February 15, 1972, denying appellant's petition for a decree that she be admitted to take the State Bar Examination and declared eligible for admission to the Bar of the State of Connecticut. Appellant submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

Opinion Below

The Memorandum of Decision of the Superior Court, New Haven County, filed December 21, 1970, is not reported, and is set forth in the Appendix, *infra*, at pp. 17-21. The opinion of the Connecticut Supreme Court is reported at *Conn. Law Journal*, p. 1, February 15, 1972, — Conn. —, excerpted at 40 Law Week 2566, and set forth in the Appendix, *infra*, at pp. 22-39.

Jurisdiction

The judgment of the Connecticut Supreme Court was entered on February 15, 1972, and notice of appeal was filed in that Court on February 22, 1972 (App., *infra*, pp. 40-42). The jurisdiction of the Supreme Court to review this decision by appeal is conferred by 28 U.S.C. Section 1257(2). The following decisions sustain the jurisdiction of this Court to review the judgment on appeal in this case: *Lathrop v. Donohue*, 367 U.S. 820 (1961); *In Re Gault*, 387 U.S. 1 (1967).

Statutes Involved

CONNECTICUT PRACTICE BOOK, Section 8, Qualification for Admission:

"First, that he is a citizen of the United States."

Questions Presented

1. Whether Superior Court Rule 8(1), which requires that an applicant for admission to the bar be a citizen of the United States, denies to appellant, a lawfully admitted resident alien, the equal protection of the laws.
2. Whether Rule 8(1) interferes with exclusive Federal power over immigration and naturalization, thus contravening the Supremacy Clause.
3. Whether Rule 8(1) as applied unconstitutionally burdens appellant's First Amendment right to determine her nationality as guaranteed by international public policy.

Statement of the Case*

The Appellant is an applicant for admission to the bar. She is a resident and taxpayer of New Haven and has complied with all the conditions and requirements for admission to take the bar examinations except that she is not a citizen of the United States. Although she could easily become a citizen of the United States by reason of her marriage to a United States citizen, she has elected to remain a citizen of the Netherlands and has not filed and does not intend to file a declaration of intent to become a citizen of this country. 8 U.S.C. §§1427(f), 1430(a). She filed with the clerk of the Superior Court an application for admission to the bar and the standing committee on recommendations for admission to the bar of New Haven County recommended to the bar of that county that her application be denied as she was not a citizen and thus failed to meet the requirements of the rules of the Superior Court for admission as an attorney. At a meeting of the bar of New Haven County, the report of the standing committee on recommendations for admission to the bar was presented and the members of the bar voted to accept the report of the committee denying her application. She thereupon petitioned the Superior Court for New Haven County for a decree that she be permitted to take the examination as a candidate for the bar and that she be declared eligible for such admission. Her petition was denied on the ground that she did not meet the necessary qualification of being a citizen of the United States which is the

* The statement of the case is taken verbatim from the Opinion of the Supreme Court of Connecticut, App., *infra*, pp. 22-24, except for the minor modifications necessary to properly identify the parties.

first requirement provided by §8 of the rules of the Superior Court governing admission to the Connecticut bar. Practice Book §8(1).

From this judgment the Appellant appealed to the Supreme Court of Connecticut. Her assignment of errors claimed that the court erred in not declaring §8(1) of the Practice Book to be unconstitutional; in not exercising its inherent power to waive the provisions of §8(1), in order to avoid injustice to the petitioner and in overruling the several claims of law which she made as follows: "a. Rule 8(1) of the Superior Court Rules discriminates unreasonably against aliens situated as is the petitioner, depriving them thereby of their Constitutional Right to equal protection of the law; b. All forms of discrimination against aliens are presumed invalid unless the State shows an overwhelming or compelling interest in maintaining discrimination. c. Superior Court Rule 8(1) interferes with the Federal power over immigration. d. Superior Court Rule 8(1) as applied to the petitioner violates international public policy and the First Amendment of the United States Constitution by burdening petitioner's right freely to determine her nationality. e. Superior Court Rule 8(1) creates an unreasonable and arbitrary classification without rational relation to the petitioner's fitness or capacity to practice law. f. Superior Court Rule 8(1) violates equal protection in that it treads upon fundamental personal rights without satisfying the more stringent tests established for such regulations. g. Superior Court Rule 8(1) does not promote a compelling governmental interest. h. Superior Court Rule 8(1) imposes an impermissible burden upon interstate travel."

The Supreme Court of Connecticut overruled the Appellant's assignment of errors and upheld the constitutionality of Rule 8(1). With regard to Appellant's equal protection claim, that court held:

In our opinion, there is clearly a rational connection between a requirement of loyalty and allegiance to the state, with the concomitant adherence to its political and judicial system, and the exercise of those powers, participation in the state's judicial branch of government, and membership in what Mr. Justice Harlan of the United States Supreme Court has referred to as "a profession in whose hands so largely lies the safekeeping of this country's legal and political institutions." *Konigsberg v. State Bar of California*, 366 U.S. 36, 52, 81 S. Ct. 997, 6 L. Ed. 2d 105. We deem it entirely reasonable that the Superior Court as a constitutional court requires that persons, to be admitted to assist the court in the administration of justice and the laws of the state, be citizens and not owe their primary allegiance to a foreign power. App., *infra*, p. 31.

In reaching this conclusion, the court also ruled that even though any discrimination against aliens is "inherently suspect," Rule 8(1) is justified because "the requirement of citizenship is not simply reasonable but is basic to the maintenance of a viable system of dispensing justice under our form of government." App., *infra*, pp. 33-34.

With regard to Appellant's claim that Rule 8(1) interfered with federal power over immigration, the court said:

The intent of Section 8(1) is clearly neither to insure economic success for citizens as opposed to aliens

nor to discourage aliens from settling within the jurisdiction. Rather, it was intended to serve a greater need than mere financial success for a selected class. We are persuaded that the rule is neither inconsistent with nor repugnant to the power over immigration conferred on Congress by article first Section 8 of the constitution of the United States. App., *infra*, p. 37.

Finally, the court rejected the Appellant's claim that Rule 8(1) violated her First Amendment right, recognized in international law, freely to determine her own nationality.

THE QUESTIONS ARE SUBSTANTIAL

I.

Superior Court Rule 8(1), which bars aliens from the practice of law, is "inherently suspect" and is a denial of the equal protection of the laws.

By court rule, Connecticut classifies applicants for admission to the bar into two categories: citizens and aliens. Citizens are eligible for admission; aliens are not. The majority of states similarly require United States citizenship as a precondition of eligibility for the practice of law. See, *Alien Lawyers in the United States and Japan: A Comparative Study*, 39 Wash. L. Rev. 412 (1964). Such rules deny the equal protection of the laws to lawful resident aliens like the Appellant.

Just last Term, this Court unanimously reaffirmed the principle that "... classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny." *Graham v. Rich-*

ardson, 403 U.S. 365, 29 L. Ed.2d 534, 541 (1971). In *Graham* this Court invalidated, as a violation of the Equal Protection Clause, statutory arrangements which conditioned eligibility for welfare benefits on United States citizenship or on extended residence in the state. The Court rejected the states' claim that these laws advanced any "special public interest," holding instead that any such disqualifications based on alienage must, at the very least, be shown to advance compelling state interests, or else they must fall.¹

Following *Graham*, several federal courts have invalidated statutes which excluded aliens from eligibility for employment in the civil service. See, *Dougall v. Sugarman*, — F. Supp. —, 40 Law Week 2304, 4 CCH EMPL. PRAC. DEC. §7568 (S.D.N.Y. 1971, 3 judge court), *appeal filed*, 40 U.S. Law Week 3485; *Teitcheid v. Leopold*, — F. Supp. —, 4 CCH EMPL. PRAC. DEC. §7561 (D. Vt. 1971) (holding that in light of *Graham*, the question did not even require the convening of a three-judge court); *Younus v. Shabat*, 336 F. Supp. 1137 (N.D. Ill. 1971) (holding that a state college cannot deny tenure to an otherwise qualified resident alien); cf., *Jalil v. Hampton*, — F.2d — (D.C. Cir. No. 24,640, 3/8/72) (involving the ban on employing aliens in the federal civil service). Rule 8(1), like these statutes, advances no compelling State interest.

¹ Although the court below concluded that the citizenship requirement did advance compelling interests, within the meaning of *Graham*, the reference to *Graham* was an afterthought. The bulk of the court's discussion of the equal protection issue is addressed to the conclusion that the citizenship requirement is "reasonable." App., *infra*, pp. 29-33.

The court below concluded that "the requirement of citizenship . . . is basic to the maintenance of a viable system of dispensing justice under our form of government."² App., *infra*, p. 34. None of the three reasons offered to justify this conclusion can pass muster under the strict judicial scrutiny test set forth in *Graham v. Richardson*.³

(a) *The "officer of the court" rationale.*

Connecticut argues that attorneys are officers of the court, creating a dual trust which imposes upon them a duty to act with fidelity both to the court and to their clients. To be sure, a state has a substantial interest in

² That sweeping conclusion was based upon no evidence whatsoever. The respondents below never even claimed that confidence and respect in the judicial system required that all members of the bar be citizens. Indeed, since approximately 10 states allow non-citizens to practice, see *Alien Lawyers: A Comparative Study*, *supra*, it is doubtful that such a showing could be made. In fact, a century ago, as this Court observed, it was commonplace for aliens to practice law in the United States: "Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal courts, who were not citizens of the United States or of any State." *Bradwell v. Illinois*, 83 U.S. 442, 16 Wall. 130, 139 (1872).

³ The court cited four other state court decisions which upheld citizenship as a requirement of admission to practice law. *Ex Parte Thompson*, 10 N.C. 355 (1824); *Large v. State Bar of California*, 218 Cal. 334, 23 P.2d 288 (1933); *Petition of Rocafort*, 186 So.2d 496 (Fla. 1966); *Application of Skonsen*, 79 Ariz. 325, 289 P.2d 406 (1955). But all were decided prior to *Graham*, rendering their precedential value dubious.

A fifth, recent case, *Application of Park*, 484 P.2d 690 (Alaska 1971), invalidated the citizenship requirement, and indicated that a resident alien who could honestly take an oath to support the United States Constitution could not be barred from the practice of law. In *Park* the Alaska Supreme Court noted that there is a significant amount of legislative and judicial activity with regard to this issue and that many states are reconsidering their exclusion of aliens from the practice of law. Indeed, a lawsuit was recently filed challenging New York's citizenship requirement. See, *Van Ginkel v. Supreme Court of the State of New York*, Appellate Division, No. 72 Civ. 1331 (S.D.N.Y.).

securing a high level of professional conduct. But there is no connection between a requirement of citizenship and the advancement of these valid interests. See generally, Konvitz, *The Alien and Asiatic in American Law*, 188 (1946); Fisher and Nathanson, *Citizenship Requirements in Professional and Occupational Licensing in Illinois*, 45 Chi. Bar. Rec. 391 (1964). Reliance on the talismanic concept that a lawyer is an "officer of the court" is insufficient. An attorney is not an "officer" in the same sense as a public official.⁴ Moreover, even if attorneys can be considered public officers, recent cases have held that the state advances no compelling interest by excluding aliens from the public service. See, e.g., *Dougall v. Sugarman*, *supra*. Thus, whatever is meant by referring to lawyers as "officers of the court" the blanket exclusion of aliens from eligibility cannot be sustained on that ground, particularly since several states do allow non-citizens to be admitted to practice. See footnote 2, *supra*.⁵

(b) Attorneys as "Commissioners of the Superior Court."

In Connecticut, attorneys are deemed Commissioners of the Superior Court and given additional powers to issue process, sign writs and administer oaths. The court below relied heavily on these powers as an additional justifica-

⁴ Article I, Section 6 of the United States Constitution provides that "no Person holding any Office under the United States" shall be a member of Congress. It has never been suggested that attorneys, particularly those admitted to practice in Federal courts, were thereby barred from serving in the Congress.

⁵ Interestingly, counsel have been unable to find any provision in the federal statutes which specifically requires that United States judges be either lawyers or citizens. Of course, the Constitution requires that members of the House (Article 1, Section 2), and Senate (Article 1, Section 3) and the President (Article II, Section 1) be citizens of the United States.

tion for requiring United States citizenship as a precondition to practice law. But, again, there is no demonstration of any relationship between the proper exercise of these powers and the requirement of citizenship. There is no guarantee that a citizen is any less likely to abuse this authority than an alien. As to any attorney who does so, there are appropriate remedies by way of discipline or disbarment to deal with the problem.

(c) *The requirement of "loyalty and allegiance to the state" and "adherence to its political and judicial system."*

The gravamen of the decision below is that a state may require fealty to it as the precondition for admission to its bar, and that non-citizens who "owe their primary allegiance to a foreign power" cannot meet that condition.

The Appellant stands ready to subscribe to an oath to uphold the Constitution and Laws of the United States and of Connecticut as well as to the Connecticut attorney's oath.* While the Connecticut Supreme Court did not find otherwise, it did seem to imply that aliens were inherently incapable of taking a constitutional oath in good faith. This argument is undermined by the fact that resident aliens may be subject to the draft, see *Astrup v. Immigration and Naturalization Service*, 402 U.S. 509 (1971) and are permitted to enlist in the Armed Forces, 10 U.S.C. Section 510(b)(1), which requires subscribing to an oath even more demanding than Connecticut's, see 10 U.S.C. Section 502.

* Newly admitted members of the Connecticut bar take a public officers oath to support the federal and state constitutions and an attorney's oath which in effect requires an attorney to be honest and scrupulous. See App., *infra*, pp. 28, 44.

More importantly, the decision below, justifying the exclusion of aliens on the ground that their status bespeaks a lack of primary loyalty to or belief in the government or the state, contravenes the rulings in the trilogy of bar admission cases decided last Term. *Baird v. Arizona*, 401 U.S. 1 (1971); *In Re Stollar*, 401 U.S. 23 (1971); *Law Student's Civil Rights Research Council v. Wadmond*, 401 U.S. 154 (1971). In those cases, this Court defined a very narrow area of legitimate inquiry into the political beliefs and loyalties of applicants to the bar, limited to insuring that an applicant has "the qualities of character and the professional competence requisite to the practice of law." *Baird v. Arizona*, *supra* at 7.

And only two kinds of political inquiries may legitimately be made by the state: (1) whether the applicant has been a knowing member of an organization advocating the overthrow of the Government by force or violence and shared the intent to further the organization's illegal goals, and (2) whether the applicant can in good faith take an oath to uphold the Constitution. In fact, New York's requirement that the applicant "believes in the form of the government of the United States and is loyal to such government" was upheld solely because it had been construed to require only a good faith willingness to swear to uphold the Constitution. *Law Students Civil Rights Research Council v. Wadmond*, *supra* at 162-63. Accordingly, an alien's "primary allegiance to a foreign power" is, by itself, a constitutionally impermissible basis for denying admission to the bar.⁷ The require-

⁷ In *Dougall v. Sugarman*, *supra*, the court specifically rejected the state's contention that it could exclude aliens from the civil service because the government is entitled to conduct its affairs through persons who have undivided loyalty. The court found no

ment of citizenship is far too broad a means of implementing a goal which can be achieved by narrowly prescribed criteria governing admission to the bar.

In sum, none of these justifications offered to support the "inherently suspect" discrimination against aliens contained in Rule 8(1) can be sustained.

II.

Superior Court Rule 8(1) infringes upon the Federal power over immigration.

In *Graham v. Richardson*, this Court held that statutes which discriminated against aliens in the distribution of welfare benefits not only denied them the equal protection of the laws but also contravened the federal government's "broad constitutional powers" over aliens. 29 L. Ed.2d at 544. In so ruling, this Court reaffirmed a principle dating back a half century:

The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government. *Fong Yue Ting v. United States*, 149 U.S. 698, 713 . . . The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority

connection between the requirement of loyalty to the government and any compelling state interest. This argument would apply *a fortiori* to the case of private attorneys.

of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality. *Truax v. Raich*, 239 U.S. 33, 42 (1915). See also, *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948).

In *Graham* this Court identified, as part of a "comprehensive" Congressional plan for the regulation of immigration and naturalization, an overriding national policy to provide economic security for lawfully admitted aliens and to allow them freely to travel and take up abode in the various States. Since the statutes in question were inconsistent with those federal policies, they encroached upon "exclusive federal power" and were constitutionally impermissible.

The court below held *Graham* inapplicable on the theory that Rule 8(1) involved only an indirect and remote interference with national immigration policy. But Rule 8(1) interferes with two other overriding federal policies, parallel to those identified in *Graham*.

First, the Rule burdens the general congressional power to admit aliens to lawful residency and livelihood in the United States. *Truax v. Raich*, *supra*; *Takahashi v. Fish and Game Commission*, *supra*.

Second, Rule 8(1) is at odds with a specific, federal regulatory scheme enacted by Congress in 1965. That arrangement establishes categories of priorities for the annual admission of aliens. 8 U.S.C. Sections 1151(a), 153. The second preferential category consists of "qualified immigrants who are members of the professions . . .",

which is specifically defined to include "lawyers" 8 U.S.C. Section 1101(32).^{*} Accordingly, it is specific national policy to encourage the immigration of persons like the Appellant who have received advanced professional training. The effect of Rule 8(1) is in conflict with this federal policy, thus contravening exclusive federal control over immigration and thereby infringing the Supremacy Clause. See *Purdy v. Fitzpatrick v. California*, 71 Cal.2d 566 (1969); *Dougall v. Sugarman*, *supra* (invalidating, on pre-emption grounds, a statutory exclusion of aliens from eligibility for the civil service); *Teitcheid v. Leopold*, *supra* (same).

III.

Superior Court Rule 8(1) violates the First Amendment by burdening Appellant's right, recognized in international law and public policy, freely to determine her own nationality.

One of the most important, emerging principles of international law is that the individual should have the right to freely determine his or her nationality. See Article 15, Universal Declaration of Human Rights. That principle is particularly important with regard to women like Appellant who have husbands whose nationality differs from their own, because of the tendencies to require them to adopt their husband's nationality. See, Art. I, 1957 United Nations Convention on the Nationality of Married Women.

^{*} However, the statute withholds such preferential immigration unless the Secretary of Labor has certified that there would not be an adverse effect on American labor. 8 U.S.C. Section 1182(a) (4). The Secretary of Labor has certified that the preferential admission of aliens with advanced degrees will not have such an adverse effect. 29 C.F.R. pt. 60.2(a), Schedule A, Group 1 (1969), App., *infra*, pp. 45-47.

In fact, several International Conventions have sought to safeguard the right of women married to a husband with a nationality different from their own to retain their own nationality, if they choose to, and their right not to be discriminated against as a result of such a choice:

Women shall have the same right as men to acquire, change or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing on her the nationality of her husband. Art. 5, 1967 Declaration on the Elimination of Discrimination against Women.

Plainly it is a complete frustration of such international law and policy to force a woman to give up her profession in order to exercise the fundamental right to retain her nationality.

The policies underlying these principles have a close analogy in United States constitutional law, which recognizes that an individual must be free to determine what acts of fundamental allegiance he chooses to engage in. *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943).

Rule 8(1), as applied to Appellant, clearly, albeit indirectly, imposes a severe burden on her right of free choice in matters of fundamental allegiance. For either she has to give up her nationality, or she cannot be admitted to the Connecticut Bar. And this Court has long held that even such indirect interference with fundamental rights cannot be accomplished where compelling state interests are not advanced. *Sherbert v. Verner*, 374 U.S. 398 (1963); *Flemming v. Nestor*, 363 U.S. 603 (1960);

Speiser v. Randall, 357 U.S. 513 (1958) ; *Shapiro v. Thompson*, 394 U.S. 618 (1969).

Consequently, Rule 8(1) is inconsistent with international public policy and with the First Amendment of the United States Constitution, in that if applied to Appellant it would necessarily operate to coerce her into giving up her nationality and engaging in an act of allegiance—in order to secure the benefit of the equally fundamental right to practice her profession.

CONCLUSION

For the reasons set forth above, jurisdiction should be noted.

Respectfully submitted,

R. DAVID BROILES
HOOPER, KERRY & CHAPPELL
200 Fort Worth Club Bldg.
Fort Worth, Texas 76102

MELVIN L. WULF
JOEL M. GORA
American Civil Liberties Union
Foundation
156 Fifth Avenue
New York, New York 10010

Attorneys for Appellant

April 1972

APPENDIX**Decision and Judgment of the
Superior Court, New Haven County****MEMORANDUM OF DECISION**

This case involves Mrs. Fre Le Poole Griffiths, a citizen of the Netherlands, who has applied to the Standing Committee on Recommendations for Admissions to the Bar, of New Haven County, for permission to take the Connecticut Bar examination. Her application was denied on the basis that she is not a citizen of the United States. Whether or not she has completed the necessary educational requirements to be permitted to take the Bar examination, or whether or not she has satisfied the moral or fitness qualifications, is not the subject of this memorandum.

The applicant is married to an American citizen, (who, incidentally, is visiting professor of law associated with the Yale Law School). It is conceded by counsel in this case that the applicant could elect to become a citizen of the United States by virtue of her marriage to a United States citizen, but she has elected to remain a citizen of Holland.

Section 51-80 of the Connecticut General Statutes, (Rev. 1958) provides as follows:

"ADMISSION. The Superior Court may admit and cause to be sworn as attorneys such persons as are qualified therefor, agreeably to the rules established by the judges of said court, and said judges may establish rules relative to the admission, qualifications, practice and removal of attorneys."

Pursuant to this statute, the judges of the Superior Court had adopted Rules for Admission, as set forth in the Connecticut Practice Book (1963), sections 2 through 27.

Section 8, entitled Qualifications for Admission, provides, *inter alia*,:

"First that he is a citizen of the United States."

The applicant, through her counsel, has filed an excellent Brief and Supplemental Brief, claiming that the requirement of citizenship is repugnant to our law on several grounds. She cites many cases wherein the Equal Protection clause has been applied to aliens as well as to citizens. She also cites a recent decision of *Keenan, et al. v. Board of Law Examiners of the State of North Carolina, et al.*, United States District Court for the Eastern District of North Carolina, Civil No. 2554, under date of October 2, 1970, which held that a provision that an applicant for admission to the Bar of North Carolina must be a "bona fide citizen and resident of the State of North Carolina for a period of at least twelve months" was unconstitutional as imposing an improper burden on interstate travel. In that case, however, the question of citizenship was not directly at issue, but the decision revolved around a question of residency.

Diligent search for cases that have passed upon the requirement of citizenship for prospective lawyers has revealed no definitive decision in favor of the applicant's position; whereas there have been several cases denying admission to the practice of law because of lack of citizenship. See 39 A.L.R. 349; and *Appitition of Skousen* (Ariz. 1955) 289 P.2d 406; *Agg Large v. State Bar of*

California, (1933) 23 P.2d 288; *Petition of Rocafort* (Fla. 1966); *Ex parte Thompson*, 10 N.C. 355, 363.

In Connecticut, the Rule Making power of the judges of the Superior Court, a constitutional court, has been upheld on many occasions.

In Re Appeal of Mary E. Dattilo, 136 Conn. 492;

State Bar Assn. v. Conn. Bank & Trust Co., 145 Conn. 232;

Heiberger v. Clark, 148 Conn. 185.

In the present case there is the additional factor that the applicant, at her own option, has decided not to become a citizen of the United States, but has elected to remain a citizen of Holland.

There is the further differentiation to be made in this case, as opposed to cases involving employment rights of citizens in certain trades or occupations. The judges of the Connecticut Superior Court, in promulgating the rules contained in the Connecticut Practice Book, have stressed in many sections thereof the high professional standards and qualifications that shall be required of members of the Bar. One who practices law enters a venerable and esteemed profession; and the judges of the Connecticut Superior Court have properly prescribed certain rules and safeguards in connection with professional qualifications. It should also be noted that a lawyer is an officer of the court,

the power to issue writs of attachment and the authority to administer oaths. Sections 51-85 and 1-24 of the Connecticut General Statutes. (Rev. 1958).

As a matter of interest, Connecticut Statutes require citizenship, or declaration of citizenship intent, for the licensing of the following activities:

1. Medicine and Surgery, Sec. 20-10;
2. Osteopathy, Sec. 20-17;
3. Podiatry, Sec. 20-54;
4. Pharmacy, Sec. 20-171;
5. Embalmers and Funeral Directors, Sec. 20-217;
6. Registration of ownership or management of barber-shop, Sec. 20-140; (but see Sec. 20-236 re barber license—no U.S. Citizenship required);
7. Ownership or operation of barber school and college, Sec. 20-245;
8. Hairdressers and cosmeticians, Sec. 20-250;
9. Hypertrichologists (hair removers), Sec. 20-270;
10. Certified Public Accountants, Sec. 20-282;
11. Architects, Sec. 20-291;
12. Sanitarians, Sec. 20-361.

In view of the fact that the applicant does not qualify as a citizen of the United States the application must be denied.

WRIGHT, *Judge*

(Filed: Dec. 21, 1970.)

Present, HON. DOUGLASS B. WRIGHT, *Judge*

JUDGMENT

This petition dated May 22, 1970, praying for a hearing on said Petition and that this Honorable Court decree that the Petitioner be admitted to take the examination as a candidate for the Bar of the State of Connecticut, and that she be declared eligible for admission to the Bar of the State of Connecticut, and for such other further relief as the Court may deem just and necessary, came to this Court on May 27, 1970, when the Court entered an order to show cause thereon, ordering that a true copy of said petition be served on Curtiss K. Thompson, Esq., Chairman of the Standing Committee for New Haven County on Recommendations for Admission to the Bar of Connecticut, and further ordering said Standing Committee to show cause, if any they have, why said petition should not be granted, and thence to September 14, 1970 when George R. Tierney, Esq., filed an appearance in behalf of the Bar Examining Committee of the State of Connecticut, as an interested party, and thence to September 15, 1970 when said petitioner filed a paper entitled "Request For Admission Of Documents", and thence to October 5, 1970 when said petitioner filed a paper entitled "Notice of Exhibit", and thence to the present time when said applicant and said Bar Examining Committee for the State of Connecticut appeared and were heard by the Court.

The Court, having heard the aforesaid parties on said petition, finds that said petitioner does not qualify as a citizen of the United States for admission to take the examination for the Bar of the State of Connecticut.

Whereupon it is adjudged that said petition be and the same hereby is denied.

WRIGHT,
Judge

Opinion of the Connecticut Supreme Court

IN RE APPLICATION OF
FRE LE POOLE GRIFFITHS,
FOR ADMISSION TO THE BAR

Petition for a decree that Fre Le Poole Griffiths be admitted to take the bar examination and that she be declared eligible for admission to the bar, brought to the Superior Court in New Haven County and heard by the court, *Wright, J.*; judgment denying the petition, from which the applicant appealed. *No error.*

R. David Broiles, for the applicant.

George R. Tiernan, for the State Bar Examining Committee.

HOUSE, C. J. The petitioner is an applicant for admission to the bar. She is a resident and taxpayer of New Haven and has complied with all the conditions and requirements for admission to take the bar examinations except that she is not a citizen of the United States. Although she could easily become a citizen of the United States by reason of her marriage to a United States citizen, she has elected to remain a citizen of the Netherlands and has not filed and does not intend to file a declaration of intent to become a citizen of this country. 8 U.S.C. §§ 1427 (f), 1430 (a). She filed with the clerk of the Superior Court an application for admission to the bar and the standing committee on recommendations for admission to the bar of New Haven County recommended to the bar of that county that her application be denied as she was not a citizen and thus failed to meet the requirements of the rules of the Superior Court for

admission as an attorney. At a meeting of the bar of New Haven County, the report of the standing committee on recommendations for admission to the bar was presented and the members of the bar voted to accept the report of the committee denying her application. She thereupon petitioned the Superior Court for New Haven County for a decree that she be permitted to take the examination as a candidate for the bar and that she be declared eligible for such admission. Her petition was denied on the ground that she did not meet the necessary qualification of being a citizen of the United States which is the first requirement provided by § 8 of the rules of the Superior Court governing admission to the Connecticut bar. Practice Book § 8 (1).

From this judgment the petitioner has appealed to this Court. Her assignment of errors claims that the court erred in not declaring § 8 (1) of the Practice Book to be unconstitutional; in not exercising its inherent power to waive the provisions of § 8 (1), in order to avoid injustice to the petitioner and in overruling the several claims of law which she made as follows: "a. Rule 8(1) of the Superior Court Rules discriminates unreasonably against aliens situated as is the petitioner, depriving them thereby of their Constitutional Right to equal protection of the law; b. All forms of discrimination against aliens are presumed invalid unless the State shows an overwhelming or compelling interest in maintaining discrimination. c. Superior Court Rule 8(1) interferes with the Federal power over immigration. d. Superior Court Rule 8(1) as applied to the petitioner violates international public policy and the First Amendment of the United States Constitution by burdening petitioner's right freely to determine her nationality. e. Superior Court Rule 8(1) creates an unreasonable and arbitrary classification without rational relation to the petitioner's fitness or ca-

capacity to practice law. f. Superior Court Rule 8(1) violates equal protection in that it treads upon fundamental personal rights without satisfying the more stringent tests established for such regulations. g. Superior Court Rule 8(1) does not promote a compelling governmental interest. h. Superior Court Rule 8(1) imposes an impermissible burden upon interstate travel."

Before considering the specific assignments of error which are all predicated on a claim that limiting admission to the Connecticut bar to citizens of the United States violates the constitutional rights of the petitioner, it is pertinent to note the historical and legal development of the rules for admission of attorneys to practice law in this state. The early history is traced in *Heiberger v. Clark*, 148 Conn. 177, 169 A.2d 652, and at length in *O'Brien's Petition*, 79 Conn. 46, 63 A. 777; see also Loomis & Calhoun, *Judicial and Civil History of Connecticut*, pp. 183, 184.

The inherent power of the Superior Court as a constitutionally established tribunal to promulgate rules for the admission of attorneys and to fix by rule the qualifications necessary for the practice of law and the procedure to be followed for admission to practice is no longer open to doubt. Conn. const., art. 5 § 1; *In re Application of Dinan*, 157 Conn. 67, 71, 244 A.2d 608; *In re Application of Warren*, 149 Conn. 266, 272, 178 A.2d 528; *Heiberger v. Clark*, supra, 185; *State Bar Assn. v. Connecticut Bank & Trust Co.*, 145 Conn. 222, 232, 140 A.2d 863; *Rosenthal v. State Bar Examining Committee*, 116 Conn. 409, 415, 165 A. 211. Although much assistance in connection with admission to the bar is provided by the local committees of the bar, the decision on standards of admission rests with the judges of the Superior Court. *Heiberger v. Clark*, supra, 186; *In re Application of Dodd*, 132 Conn. 237, 243, 43 A.2d 224;

Rosenthal v. State Bar Examining Committee, supra, 414. It was in the exercise of this judicial power that the Superior Court established the requirement of United States citizenship for admission to the bar. The rule first appears in the 1879 Practice Book §§ 4 (3) and 8. It has remained substantially unchanged through the later revisions of the Practice Book in 1890 (see 58 Conn. 561, 590), 1908, 1922, 1934, 1951 and now § 8 (1) of the 1963 edition.

The general duties, obligations and privileges of a member of the Connecticut bar are commonly known, but it is highly relevant to a consideration of the claims of the petitioner to note the unique characteristics coincident with that status. A member of the Connecticut bar is much more than a lawyer in the sense of one "whose profession is to conduct lawsuits for clients or to advise as to the prosecution or defense of lawsuits or as to legal rights and obligations in other matters." Webster, Third New International Dictionary. In the English common-law tradition, he has often been loosely referred to as an "officer" of the court before which he is permitted to practice. See, for example, *Powell v. Alabama*, 287 U.S. 45, 73, 53 S. Ct. 55, 77 L. Ed. 158. Indeed, this court has referred to him as such on numerous instances in the past. See *In re Application of Dinan*, supra, quoting from *Heiberger v. Clark*, supra, 182; *In re Durant*, 80 Conn. 140, 147, 67 A. 497. It was stated in *Hennessy v. Metropolitan Life Ins. Co.*, 74 Conn. 699, 710, 52 A. 490: "An attorney at law, as an officer of the court, speaks in a certain sense by its authority," and in *Cunningham v. Fair Haven & W.R. Co.*, 72 Conn. 244, 252, 43 A. 1047: "An attorney represents his client as an officer of the court and is responsible for the purity and fairness of all his dealings in court." Yet an attorney is "not an 'officer' within the ordinary meaning of that term.

. . . The word 'officer' as it has always been applied to lawyers conveys quite a different meaning from the word 'officer' as applied to people serving as officers within the conventional meaning of that term." *Cammer v. United States*, 350 U.S. 399, 405, 76 S. Ct. 456, 100 L. Ed. 474 and footnote, with "[i]llustrations of the confusion and difficulty of courts in explaining what is meant when a lawyer is called an officer of the court"; see also 7 Am. Jur. 2d, Attorneys at Law, § 3.

We noted in *In re Application of Dodd*, 131 Conn. 702, 705, 42 A.2d 36, that "[a]ttorneys have a franchise which is regarded as a property right." In *State Bar Assn. v. Connecticut Bank & Trust Co.*, supra, 234, we commented on the special qualifications required of members of the bar and mentioned the dual trust which is imposed on them to act "with fidelity both to the courts and to their clients." We also noted that part of their work involves appearance in court and part involves advice and the drafting of instruments which "has profound effect on the whole scheme of the administration of justice." *Id.*, 235. In *Rosenthal v. State Bar Examining Committee*, supra, 414, the court remarked: "The practice of law is not a craft or a trade; it is a profession the main purpose of which is to aid in the doing of justice according to law between the State and the individual and between man and man. The occasions upon which an attorney may be required to act touch, in many instances, the deepest and most precious concerns of men, women and children. They may involve the liberty, the property, the happiness, the character and the life of his client." Number 32 of the Canons of Professional Ethics refers (Practice Book, p. 12) to attorneys as "ministers" of the law.

In addition, in Connecticut each attorney-at-law admitted to practice within the state, while in good standing, is a commissioner of the Superior Court and in that capacity, may, within the state, signs writs, issue subpoenas, take recognizances and administer oaths. General Statutes § 51-85; *Amato v. Campano*, 141 Conn. 247, 250, 105 A.2d 185. Mesne process in civil actions consists of a writ of summons or attachment which "shall be signed by a commissioner of the superior court or a judge or clerk of the court to which it is returnable." General Statutes § 52-89; Practice Book § 28. "Such signing is one of the processes of law by which a man may be deprived of his liberty and property. It is carefully guarded. It is not to be done indiscriminately. *Doolittle v. Clark*, 47 Conn. 316, 322. The signing of a writ by a person as a commissioner of the Superior Court is not a mere ministerial act." *Sharkiewicz v. Smith*, 142 Conn. 410, 412, 114 A.2d 691. In the exercise of their power to issue writs as commissioners of the Superior Court, Connecticut attorneys may issue writs of attachment "against the estate of the defendant, both real and personal, and for want thereof against his body." General Statutes § 52-279. It is of more than passing interest that the exercise of such authority was formerly restricted to the governor, lieutenant governor, a senator, judge, justice of the peace or the clerk of the court to which the writ of summons or attachment was returnable. See Statutes, 1854, p. 51, § 1. The authority was first granted to all attorneys admitted to practice in this state in 1921. See Public Acts 1921, c. 67.

Attorneys are empowered to "command" actions by county sheriffs and town constables. General Statutes § 52-90. Sheriffs are elected officials within the executive department of the state government by virtue of the con-

stitution of Connecticut, article fourth, § 25. See also General Statutes § 9-182. "The rights, authority and duty . . . conferred upon the sheriff by law, clearly invest him with a portion of the sovereign power of the government to be exercised by him for the public good." *Sibley v. State*, 89 Conn. 682, 685, 96 A. 161. Town constables are elected town officers and must be electors of the town in which they are elected. General Statutes §§ 9-185, 9-186. By statutory enactment, the power to "command" these constitutional and municipal officers is vested in Connecticut attorneys, their orders to be issued "[b]y authority of the state of Connecticut." General Statutes § 52-90. Thus, attorneys in Connecticut are granted extraordinary powers to perform their duties before the courts of the state and they are charged with using these powers and acting by the authority of the state in the interests of justice.

Because of these powers and their interwoven dual functions as members of the bar and thereby as commissioners of the Superior Court, newly admitted members of the Connecticut bar take not only the traditional oath required of attorneys but the oath required by article eleventh, § 1 of the constitution of Connecticut which prescribes that "[m]embers of the general assembly, and all officers, executive and judicial, shall, before they enter on the duties of their respective offices, take the following oath or affirmation, to wit: You do solemnly swear (or affirm, as the case may be) that you will support the constitution of the United States, and the constitution of the state of Connecticut, so long as you continue a citizen thereof; and that you will faithfully discharge, according to law, the duties of the office of . . . to the best of your abilities. So help you God." See also General Statutes § 1-25. Significant in the context of the present case in

which the applicant is an alien is not only the obligation to support the constitution of the United States and the constitution of the state of Connecticut but to do so "so long as you continue a citizen thereof."

It is with the foregoing considerations in mind that we now turn to the claims of the petitioner that the requirement of United States citizenship for admission to the Connecticut bar is unconstitutional in the light of current judicial development in the interpretation of the equal protection clause. See "Developments in the Law of Equal Protection," 82 Harv. L. Rev. 1065; "Equal Protection and Supremacy Clause Limitations on State Legislation Restricting Aliens," Utah L. Rev. 136 (1970). It is by the effect of recent decisions in this area of the law that the merit of the petitioner's claims must be decided.

As briefed by the petitioner, three principal issues are raised by her appeal: (1) Does Rule 8(1) discriminate unreasonably and unconstitutionally against aliens situated as is the petitioner, depriving her of equal protection of the laws? (2) Does Rule 8(1) contravene exclusive federal power over immigration? (3) Does Rule 8(1) unconstitutionally burden the petitioner's right to determine her nationality thereby violating her rights under the first amendment of the United States constitution?

On the first of these issues the petitioner relies on a long line of authority holding that aliens as well as citizens may not be denied equal protection of the laws within the context of the fourteenth amendment to the United States constitution, which provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." That an alien as a "person" comes within the protection of this constitutional provision is well settled. *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S. Ct. 1064, 30 L.

Ed. 220; *Truax v. Raich*, 239 U.S. 33, 39, 36 S. Ct. 7, 60 L. Ed. 131; *Takahashi v. Fish & Game Commission*, 334 U.S. 410, 419, 68 S. Ct. 1138, 92 L. Ed. 1478. But this constitutional guarantee of equal protection of the laws does not prohibit a state from classifying its residents based on distinctions which are reasonable and have a foundation in logic and rationality. "The basis for a reasonable classification must show such a difference as to justify the division. 'A proper classification . . . must embrace all who naturally belong to the class—all who possess a common disability, attribute or qualification and there must be some natural and substantial difference germane to the subject and purposes of the legislation between those within the class included and those whom it leaves untouched.'" *St. John's Roman Catholic Church Corporation v. Darien*, 149 Conn. 712, 723, 184 A.2d 42; *State v. Delgado*, 161 Conn. (33 Conn. L.J., No. 23, p. 1). Absent an invidious discrimination of the type usually associated with classifications involving race or a specific nationality, the basic test of constitutional validity is one of reasonableness. *Graham v. Richardson*, 403 U.S. 365, 371, 91 S. Ct. 1848, 29 L. Ed. 534; *McGowan v. Maryland*, 366 U.S. 420, 425, 81 S. Ct. 1101, 6 L. Ed. 2d 393.

The United States Supreme Court has rejected foreign citizenship as a legitimate basis for state restrictions on the right to own property or to engage in "the common occupations of the community." *Truax v. Raich*, supra, 41; *Takahashi v. Fish & Game Commission*, supra; but, as observed in a resume entitled "Constitutionality of Restrictions on Aliens' Right to Work"; 57 Colum. L. Rev. 1012, 1026; a notable exception to the rule is the exclusion of aliens from the professions. It does not appear that the Supreme Court has passed on the specific question presented on this appeal but the applicability of the "rational

connection" test was expressly prescribed with respect to admission to the bar in *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238-39, 77 S. Ct. 752, 1 L. Ed. 2d 796. There the court said: "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. . . . [A]ny qualification must have a rational connection with the applicant's fitness . . . to practice law." See *Konigsberg v. State Bar of California*, 353 U.S. 252, 77 S. Ct. 722, 1 L. Ed. 2d 810.

We have already discussed the unique status accorded to the members of the Connecticut bar, the extensive power, authority and public and private obligations entrusted to them in the administration of justice, as well as the relationship of their functions to the administration of the constitutionally established judicial branch of the state government. In our opinion, there is clearly a rational connection between a requirement of loyalty and allegiance to the state, with the concomitant adherence to its political and judicial system, and the exercise of those powers, participation in the state's judicial branch of government, and membership in what Mr. Justice Harlan of the United States Supreme Court has referred to as "a profession in whose hands so largely lies the safekeeping of this country's legal and political institutions." *Konigsberg v. State Bar of California*, 366 U.S. 36, 52, 81 S. Ct. 997, 6 L. Ed. 2d 105. We deem it entirely reasonable that the Superior Court as a constitutional court requires that persons, to be admitted to assist the court in the administration of justice and the laws of the state, be citizens and not owe their primary allegiance to a foreign power.

In our conclusion we find ourselves in accord with the majority of the few cases which have discussed the relationship between citizenship and admission to the bar. See *Ex parte Thompson*, 10 N.C. 355; *Large v. State Bar*, 218 Cal. 334, 23 P.2d 288; *Petition of Rocafort*, 186 So. 2d 496 (Fla.); *Application of Skousen*, 79 Ariz. 325, 289 P.2d 406. We also observe that the overwhelming majority of states requires that an applicant for admission to the bar be, at the time of his application, a citizen or intend to become one. See "Alien Lawyers in the United States and Japan—A Comparative Study," 39 Wash. L. Rev. 412, 414-15; Bar Examiner's Handbook, p. 312 (1968).

The most recent case on the subject to come to our attention is *Application of Park*, 484 P.2d 690, 696, decided by the Supreme Court of Alaska on April 30, 1971. It concerned an applicant for admission to the bar who was not yet a citizen but whom the court was "certain" had "the requisite intent to be a citizen . . . in a degree and manner that would satisfy requirements for admission to the Alaska bar." The court asserted that the "inherent and final power and authority to determine the standards for admission to the practice of law in Alaska" resided in its Supreme Court and, accordingly, statutory enactments and state bar rules requiring citizenship for admission to practice were declared to be of no force and effect as encroachments on the court's prerogatives. Far from supporting the contentions of the petitioner in the case at bar, the court expressly disclaimed any indication "that there may not be imposed prerequisites for admission to the bar which bear on the qualifications of an applicant as they relate to citizenship" and concluded with the comment: "We are confident that the Alaska Bar Association can promulgate and present to this court for approval an appropriate rule

regarding residence and intent to become a citizen which will come within the scope of this opinion regarding admission of resident aliens to the Alaska bar." In the case before us not only is the petitioner not a United States citizen but she has made it clear that she has no intention of applying for such citizenship.

In reaching our conclusion that the requirement of § 8 (1) of the Practice Book does not violate the petitioner's right to the equal protection of the laws guaranteed by the fourteenth amendment, we have not overlooked her reliance on the recent decision of the United States Supreme Court in *Graham v. Richardson*, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534, which held to be invalid state restrictions on welfare aid to aliens. It stated (p. 372) that discrimination against individuals on the basis of alienage, "like those based on nationality or race are inherently suspect and subject to close judicial scrutiny" and that "[a]liens as a class are a prime example of a 'discrete and insular' minority [see *United States v. Carolene Products Co.*, 304 U.S. 144, 152-53, n. 4, (1938) [58 S. Ct. 778, 82 L. Ed. 1234] for whom such heightened judicial solicitude is appropriate. Accordingly, it was said in *Takahashi*, 334 U.S. . . . [410, 420, 68 S. Ct. 1138, 92 L. Ed. 1478], that 'the power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits.'" A similar consideration was also expressed in *Purdy & Fitzpatrick v. California*, 71 Cal. 2d 766, 456 P.2d 645, holding a public-employment citizenship requirement unconstitutional. The court there noted that because aliens are denied the right to vote they "lack the most basic means of defending themselves in the political processes" and "[u]nder such circumstances, courts should approach discriminatory legislation with special solicitude." See, to the same effect, *Dougall v.*

Sugerman, 450 F.2d (2d Cir.). Applying the tests of "special solicitude," "firm justification," "special scrutiny" and "compelling state interest" as directed in these decisions, we, nevertheless, conclude that, tested in the light of these requirements the provision of § 8 (1) of the Practice Book is not constitutionally invalid as to the petitioner as a denial to her of the equal protection of the laws. Attorneys are the means through which the majority of the people seek redress for their grievances, enforcement and defense of their rights and compensation for their injuries and losses. The courts not only demand their loyalty, confidence and respect but also require them to function in a manner which will foster public confidence in the profession and, consequently, the judicial system. In this light the requirement of citizenship is not simply reasonable but is basic to the maintenance of a viable system of dispensing justice under our form of government.

A further claim of the petitioner is that § 8 (1) of the Practice Book contravenes the exclusive federal power over immigration. Her argument is that the rule, because it denies aliens admission to the bar, unduly interferes with the entry and employment of immigrants—a field constitutionally reserved to Congress. See 42 U.S.C. § 1981; *Fong Yue Ting v. United States*, 149 U.S. 698, 713, 13 S. Ct. 1016, 37 L. Ed. 905. By the latter statute, Congress has enacted a comprehensive plan for the regulation of immigration and naturalization and granted to aliens the full and equal benefits of all laws in this country. The Supreme Court cited this instance of federal supremacy in the *Graham* case, *supra*, in concluding that state laws which restrict the eligibility of aliens for welfare assistance solely because of their alienage conflicted with federal policy and, hence, were unconstitutional. The court repeated with approval

what it had earlier said in 1915 in *Truax v. Raich*, 239 U.S. 33, 42, 36 S. Ct. 7, 60 L. Ed. 131: "The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government. . . . The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality." To the same effect is *Takahashi v. Fish & Game Commission*, 334 U.S. 410, 419, 68 S. Ct. 1138, 92 L. Ed. 1478, where the court said: "State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived federal power to regulate immigration."

We do not agree with the contention of the petitioner that federal preemption of control of immigration and the doctrine of federal supremacy as indicated in the cited cases renders § 8 (1) of the Practice Book unconstitutional as to her as an unlawful interference with the exercise of that federal power. The essence of the preemption doctrine as declared in the cited cases is that a state may not unreasonably interfere with the right of aliens to share in the economic and social benefits of the community wherein they reside. The obvious reason for the rule is that highly restrictive state statutes which so affect the ability of aliens to earn a living or receive a general benefit from residing

in a community tend to alter and restrict the normal balance of population distribution and, thus, thwart the federal regulatory scheme which promotes the mobility of aliens within the United States. *Truax v. Raich*, supra. If such statutes were permitted to stand, it is obvious that the least restrictive state would be subject to a mass influx of aliens far out of proportion to that which would be probable in a totally free society. Clearly, a state regulation or statute which had that effect must of necessity fall as a violation of the supremacy rule. On the other hand, the effects of § 8 (1) of the Practice Book on the federal regulatory scheme are at the most minimal and the restriction on admission to the bar of aliens can have but the slightest effect on the millions of aliens in this country. To those who are otherwise qualified, their individual decision on where to reside and practice will hardly affect the general balance of alien population. This is particularly true in view of the fact that the same qualification is required in an overwhelming majority of the states. "Alien Lawyers in the United States and Japan—a Comparative Study," 39 Wash. L. Rev. 412, 414-15.

In short, § 8 (1) of the Practice Book has no discernible impact on the goals behind our federal immigration laws. It is only "statutes, rules, or regulations which unreasonably burden or restrict this [interstate] movement" which must fail. *Shapiro v. Thompson*, 394 U.S. 618, 629, 89 S. Ct. 1322, 22 L. Ed. 2d 600.

Another significant factor is that § 8 (1) of the Practice Book differs materially from the decisions holding alien restriction statutes unconstitutional. Those cases have concerned state actions designed to serve the economic benefit of its citizens to the detriment of aliens. The *Graham* case held that the state could not discriminate in paying welfare

benefits; the *Takahashi* case decided that aliens as well as citizens must be given the right to earn their living from the sea; the *Truax* case declared invalid a statute which limited the employment of aliens in all occupations. The intent of § 8 (1) is clearly neither to insure economic success for citizens as opposed to aliens nor to discourage aliens from settling within the jurisdiction. Rather, it was intended to serve a greater need than mere financial success for a selected class. We are persuaded that the rule is neither inconsistent with nor repugnant to the power over immigration conferred on Congress by article first § 8 of the constitution of the United States.

The petitioner's remaining claim is that § 8 (1) "violates international public policy and the first amendment of the United States constitution by burdening petitioner's right freely to determine her nationality." In support of her claim with respect to international public policy she cites the articles of the 1933 Montevideo Convention on the Nationality of Women, the 1957 agreement of the United Nations Convention on the Nationality of Women and the 1967 United Nations General Assembly's Declaration on the Elimination of Discrimination against Women. Article 5 of the latter declaration states: "Women shall have the same right as men to acquire, change or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing on her the nationality of her husband." She does not contend that any of these international agreements entered into by the United States has the force of a treaty which is constitutionally binding on the states. Such a contention would be wholly without substantive support. See *Sei Fujii v. State*, 38 Cal. 2d 718, 242 P.2d 617; *Camacho v. Rogers*, 199 F. Supp. 155, 157 (S.D.N.Y.); *Hitai v. Immi-*

gration & Naturalization Service, 343 F.2d 466 (2d Cir.). Rather, as we understand it, the petitioner's argument is that the participation of the United States in these conventions is indicative of an overall national philosophy which must be read into the first amendment to the federal constitution. Thus, it is her contention that "as a matter of constitutional law . . . an individual must be free to determine what acts of fundamental allegiance he chooses to engage in" and that § 8 (1) of the Practice Book, as applied to her, "clearly imposes a severe burden on her right of free choice in matters of fundamental allegiance. For either she has to give up her nationality, or she cannot be admitted to the Connecticut Bar." She claims that, consequently, § 8 (1) is inconsistent with international public policy and with the first amendment to the federal constitution.

The petitioner cites no authority which directly supports her theory but relies on cases holding that state regulations which infringe on freedom of speech cannot be sustained in the absence of a showing of a "compelling state interest." *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965; *Flemming v. Nestor*, 363 U.S. 603, 80 S. Ct. 1367, 4 L. Ed. 2d 1435; *Shapiro v. Thompson*, *supra*. The force of these cases, however, is brought to bear only where there is an attempt to control speech directly. Where the attempt is to protect against an evil within the sphere of state concern, the rule is that a proscription which only tangentially touches on protected freedoms will be sustained. *Speiser v. Randall*, 357 U.S. 513, 527, 78 S. Ct. 1332, 2 L. Ed. 2d 1460.

The rule is a classic example of a state regulation designed not to restrict a right but to protect rights. It is not designed to lead the petitioner into a circumstance where she will be forced to choose between conflicting allegiances

but rather to assure that the force of her continued allegiance to a foreign power will not be brought to bear in areas affected with significant public interest in a state where she chooses to remain an alien. By withholding her allegiance from the United States she "leaves outstanding a foreign call on . . . [her] loyalties which international law not only permits our government to recognize but commands it to respect." *Harisiades v. Shaughnessy*, 342 U.S. 580, 585, 72 S. Ct. 512, 96 L. Ed. 586.

We do not find § 8 (1) of the Practice Book to be unconstitutional. Nor do we find it unreasonable that as a condition to the petitioner's admission to the bar of this state and the exercise of the rights and authority of an attorney admitted to practice in its courts that the petitioner take the necessary steps leading to citizenship, including the oath of citizenship prescribed by 8 U.S.C. § 1448 to "renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen" and "to bear true faith and allegiance" to the United States.

There is no error.

In this opinion the other judges concurred.

Judgment of the Connecticut Supreme Court

**STATE OF CONNECTICUT
SUPREME COURT**

AT HARTFORD

#6906

**APPLICATION OF
FRE LE POOLE GRIFFITHS
FOR ADMISSION TO THE BAR**

**First Tuesday of
October , 1971.**

JUDGMENT

This appeal by the petitioner from the judgment of the Superior Court for New Haven County at New Haven was filed with the Clerk of said Court on the 30th day of December, 1970, and when the petitioner filed her assignment of errors, as may appear in the certified transcript of record on file in this Court, and said appeal came thence to this Court at its term held at Hartford on the first Tuesday of January, 1971, and thence to the present term when the parties appeared and were fully heard.

And now this Court finds there is no error.

Whereupon it is adjudged that said judgment be confirmed and established and that the State Bar Examining Committee recover of the petitioner its costs taxed at . . .

Date of Judgment: February 15, 1972.

By the Court,

**EDWARD HORWITZ
Clerk.**

**Notice of Appeal Filed With the
Connecticut Supreme Court**

SUPREME COURT

of the

STATE OF CONNECTICUT

No. 6906

**IN RE APPLICATION OF
FRE LE POOLE GRIFFITHS**

**NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES**

Notice is hereby given that FRE LE POOLE GRIFFITHS, appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Connecticut, affirming the judgment against the appellant, entered in this action on February 14, 1972.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

DAVID BROILES
Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 1972, a copy of the Notice of Appeal was mailed, postage prepaid, to George Tiernan, Esq., 215 Church Street, New Haven, Connecticut 06510, Counsel for Respondent. I further certify that all parties required to be served have been served.

DAVID BROILES

Counsel for Petitioner

R. DAVID BROILES

200 Fort Worth Club Building
Fort Worth, Texas 76102

Constitutional, Statutory and Regulatory Material

ARTICLE 1, §8, United State Constitution

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

AMENDMENT XIV, United States Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT 1, United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE 1, §6, United States Constitution

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

ARTICLE VI, §2, United States Constitution

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Connecticut Attorney's Oath

You solemnly swear that you will do no falsehood, nor consent to any to be done in court, and, if you know of any to be done, you will give information thereof to the judges, or one of them, that it may be reformed; you will not wittingly, or willingly promote, sue or cause to be sued, any false or unlawful suit, or give aid, or consent, to the same; you will delay no man for lucre or malice; but will exercise the office of attorney, within the court wherein you may practice, according to the best of your learning and discretion, and with fidelity, as well to the court, as to your client, so held you God.

8 U.S.C. § 1151(a)

Exclusive of special immigrants defined in section 1101 (a) (27) of this title, and of the immediate relatives of United States citizens specified in subsection (b) of this section, the number of aliens who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 1153(a) (7) of this title enter conditionally, (i) shall not in any of the first three quarters of any fiscal year exceed a total of 45,000 and (ii) shall not in any fiscal year exceed a total of 170,000.

8 U.S.C. § 1153(a) (3)

Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 1151(a) (ii) of this title, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States.

8 U.S.C. § 1101(32)

The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

8 U.S.C. § 1182(a) (14)

Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there

are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to special immigrants defined in section 1101(a)(27)(A) of this title, (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence), to preference immigrant aliens described in sections 1153(a)(3) and 1153(a)(6) of this title, and to nonpreference immigrant aliens described in section 1153(a)(8) of this title;

29 C.F.R. § 60.2(a)(1) + Schedule A

Certification and noncertification schedules.

(a) *Determination.* To reduce delay in processing an alien's request for visa, the determination has been made by the Secretary of Labor pursuant to section 212(a)(14) that:

(1) For the categories of employment described in Schedule A and in the geographic areas therein set forth, there are not sufficient workers who are able, willing, qualified and available for employment in such categories, and the employment of aliens in such categories and in such areas will not adversely affect the wages and working conditions of workers in the United States similarly employed.

SCHEDULE A

Group I: Persons who received an advance degree in a particular field of study from an institution of higher learning accredited in the country where the degree was obtained (comparable to a Ph. D. or master's degree given in American colleges or universities).

10 U.S.C. § 502

Each person enlisting in an armed force shall take the following oath:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God."

This oath or affirmation may be taken before any commissioned officer of any armed force.

10 U.S.C. § 510(b)(1)

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the enlistment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be enlisted as a Reserve unless—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under chapter 12 of title 8; or

10 U.S.C. § 591(b)(1)

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the appointment of persons as Reserves of the armed forces under his jurisdiction. However, except as provided in section 454(i)(7) of title 50, appendix, no person may be appointed as a Reserve unless he is at least 18 years of age and—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under chapter 12 of title 8; or

10 U.S.C. § 3253(c)

In time of peace, no person may be accepted for original enlistment in the Army unless he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of chapter 12 of title 8.

10 U.S.C. § 8253

In time of peace, no person may be accepted for original enlistment in the Air Force unless he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of chapter 12 of title 8.

Article 15, Universal Declaration of Human Rights

"(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

Article 5, Declaration Elimination of Discrimination
Against Women

"Women shall have the same rights as men to acquire, change or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing on her the nationality of her husband."

FILE COPY

In The
Supreme Court of the United States

OCTOBER TERM, 1971

Supreme Court, U. S.
FILED

MAY 11 1972

MICHAEL RODAK, JR., CLERK

No. 71-1336

IN RE APPLICATION OF FRE LE POOLE GRIFFITHS,
FOR ADMISSION TO THE BAR,
Appellant.

On Appeal from the Supreme Court
of Connecticut

MOTION TO DISMISS OR AFFIRM

GEORGE R. TIERNAN,
215 Church Street,
New Haven, Connecticut 06510,
Attorney for State Bar Examining
Committee of Connecticut,
Appellee.



In the
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1336

IN RE APPLICATION OF FRE LE POOLE GRIFFITHS,
FOR ADMISSION TO THE BAR,
Appellant.

On Appeal from the Supreme Court
of Connecticut

MOTION TO DISMISS OR AFFIRM

The Appellee moves the Court to dismiss the appeal herein, or in the alternative, to affirm the judgment of the Supreme Court of Connecticut on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I.

THE STATE STATUTE INVOLVED AND
THE NATURE OF THE CASE.

A.

THE STATUTE.

This appeal raises the question of the validity of the first requirement provided by § 8 of the rules of the Superior Court of Connecticut governing admission to the Connecticut Bar, Practice Book § 8(1). The rule of court relative to the admission of attorneys has the force of a statute. *Re Application of Dodd*, 132 Conn. 237, 241, 43A. 2d 224.

The pertinent part of the rule is as follows:

"Sec. 8. Qualifications for Admission. To entitle an applicant to admission to the bar, except under Sec. 12 of these rules, he must satisfy the committee:

FIRST. That he is a citizen of the United States."

(Section 12 applies to attorneys of other jurisdictions who must be citizens.)

B.

THE PROCEEDINGS BELOW.

The Appellant is an applicant for admission to the bar of Connecticut. She is a resident and taxpayer of New Haven, Connecticut and has complied with all the conditions and requirements for admission to take the bar examinations except that she is not a citizen of the United States. Although she could easily become a citizen of the United States by reason of her marriage to a United States citizen, she has elected

to remain a citizen of the Netherlands and has not filed and does not intend to file a declaration of intent to become a citizen of this country. 8 U.S.C. §§ 1427(f), 1430(a). She filed with the clerk of the Superior Court an application for admission to the bar and the standing committee on recommendations for admission to the bar of New Haven County recommended to the bar of that county that her application be denied as she was not a citizen and thus failed to meet the requirements of the rules of the Superior Court for admission as an attorney. At a meeting of the bar of New Haven County, the report of the standing committee on recommendations for admission to the bar was presented and the members of the bar voted to accept the report of the committee denying her application. She thereupon petitioned the Superior Court for New Haven County for a decree that she be permitted to take the examination as a candidate for the bar and that she be declared eligible for such admission. Her petition was denied on the ground that she did not meet the necessary qualifications of being a citizen of the United States. On appeal the Supreme Court of Connecticut upheld the constitutionality of § 8(1), and the judgment denying her petition was affirmed.

II.

ARGUMENT

I.

THIS APPEAL PRESENTS NO SUBSTANTIAL QUESTION

Although this Court has not specifically passed on the specific question raised in this case, principles of prior decisions apply to and should control the disposition of this appeal.

No previous decision or rule of this Court or any Court has been cited by the Appellant in support of her claim that citizenship is an unconstitutional requirement for admission to the practice of law.

The exclusion of aliens from the profession of law is not a denial of equal protection of the law under the Fourteenth Amendment of the United States Constitution. It is recognized that the prohibition against state denial of equal protection is applicable to aliens as well as citizens. *Truax vs. Raich*, 239 U.S. 33; *Takahashi vs. Fish and Game Commission*, 334 U.S. 410. The equal protection clause does not guarantee, however, that all persons be treated in the same manner; it only proscribes discrimination which lacks a rational basis for differences in classifications. *McGowan vs. Maryland*, 366 U.S. 420. This Court has never held that discrimination based on foreign citizenship, like discrimination based on race is *per se* irrational. It is true that this Court has rejected foreign citizenship as a basis for state restrictions on ownership of property and employment in particular occupations or as sometimes stated "the common occupations of the community." *Oyama vs. California*, 332 U.S. 633; *Takahashi vs. Fish and Game Commission*, *supra*; *Sei Fujii vs. State*, 38 Cal.2d 718, 242 P.2d 617. *Truax vs. Raich*, *supra* at 43. The notable exception to the foregoing rule is the exclusion of aliens from the professions. 57 Columbia L. R. 1012, 1026.

In more recent cases this Court has adopted the test of reasonableness, *Graham vs. Richardson*, 403 U.S. 365, 371; *McGowan vs. Maryland*, 366 U.S. 420, 425; and promoting a compelling state interest. *Shapiro vs. Thompson*, 394 U.S. 618. See *Keenan vs. Board of Law Examiners*, 317 Fed. Supp. 1350.

Prior to *Schware vs. Board of Law Examiners of New Mexico*, 353 U.S. 232 Federal Courts had been reluctant to intervene in suits involving state bar proceedings. In *Schware* this Court recognized the right of a state to require high standards of qualification, but they must have a rational connection with the applicant's fitness or capacity to practice law. This position was reaffirmed in *Law Students Research Council vs. Wadmond*, 401 U.S. 154.

In *Keenan* a residence requirement of one year for bar applicants in North Carolina was declared unconstitutional on the authority of *Shapiro vs. Thompson*, *supra*, because the state did not show a compelling state interest. In *Wadmond* the issue of citizenship or six-month residence was not raised.

In a correlative classification this Court has differentiated loyalty oaths required of "a limited class of persons in or aspiring to public positions by virtue of which they could, if evilly motivated, create serious danger to the public safety." *Speiser vs. Randall*, 357 U.S. 513, 527. See *Konigsberg vs. State Bar of California*, 353 U.S. 54, noting this distinction. "Lawyers, who are officers of the courts, fit the latter rubric." *Law Students Civil Rights Research Council, Inc. vs. Wadmond*, 299 F. Supp. 117, 125 *affirmed* 401 U.S. 154. The Court said as to the oath requiring bar applicants in New York to swear or affirm that they will support the Constitution of the United States as well as that of the State of New York, "there can be no doubt as to its validity." 401 U.S. 162.

The Connecticut Supreme Court, in upholding its court rule requiring citizenship for bar applicants, adequately demonstrated that the rule is within permissible constitutional limits as already defined by this Court in its prior decisions.

The Federal Courts maintain an interest as to who is admitted to practice law by the state. They depend on states' admission rules. An unnaturalized alien could not make the showing required for admission to practice in this Court under Rule 5 of the Supreme Court Rules. 1 Cyc. of Fed. Pro. § 1.55.

It would appear that there can be little doubt that the requirement that bar applicants be citizens is a reasonable classification and the state has a vital interest in maintaining this qualification as a prerequisite. It is clearly within the permissible limits previously outlined by this Court and never rejected by any court decision.

II.

RULE § 8(1) DOES NOT CONTRAVENE THE EXCLUSIVE FEDERAL POWER OVER IMMIGRATION.

The rule does not violate the supremacy clause of the Constitution by encroaching upon the Federal Legislative scheme dealing with immigrant entry. It is only statutes, rules or regulations which unreasonably burden or restrict interstate movement which must fail. *Shapiro vs. Thompson, supra*, at 629. Since it is agreed that an overwhelming number of states require the qualification of citizenship for admission to practice law the general balance of alien population in this country will hardly be affected as it might in the case of state restrictions on employment of aliens in "the common occupations of the community."

III.

THE CONNECTICUT RULE DOES NOT VIOLATE INTERNATIONAL PUBLIC POLICY AND THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION BY BURDENING APPELLANT'S RIGHT FREELY TO DETERMINE HER NATIONALITY.

The Appellant cites no authority which directly supports her theory, but relies on cases restricting state regulations limiting freedom of speech unless there is shown to be a "compelling state interest." The cases cited involve attempts to control speech directly. This Court in its resolution of First Amendment cases such as freedom of speech, press and assembly has subordinated them to more public interests. See *Schenck vs. United States*, 249 U.S. 652; *Dennis vs. United States*, 341 U.S. 494.

Dual allegiance presents problems that have been recognized. *Kennedy vs. Mendoza-Martinez*, 372 U.S. 144, 187; *Rogers vs. Belli*, 401 U.S. 815. In answer to the Appellant's claim the Connecticut Supreme Court said in its decision in this case:

"The rule is a classic example of a state regulation designed not to restrict a right but to protect rights. It is not designed to lead the petitioner into a circumstance where she will be forced to choose between conflicting allegiances but rather to assure that the force of her continued allegiance to a foreign power will not be brought to bear in areas affected with significant public interest in a state where she chooses to remain an alien. By withholding her allegiance from the United States she leaves outstanding a foreign call on . . . [her] loyalties which international law not only permits our government to recognize but commands it to respect.' *Harisiades*

vs. *Shaughnessy*, 342 U.S. 580, 585, 72 S. Ct. 512, 96 L. Ed. 586." 163 Conn. — (33 Conn. L. J., No. 33, pp. 1, 7).

In effect the Appellant is requesting this Court to decide the issue on policy and this Court has stated that even if an approach might be wise policy "decisions based on policy are not for us to make." *Law Students Research Council, Inc. vs. Wadmond*, *supra*, 169.

CONCLUSION

Wherefore, Appellee respectfully submits that the questions upon which the cause depend are so unsubstantial as not to need further argument, and Appellee respectfully moves the Court to dismiss the appeal or, in the alternative, to affirm the judgment entered in the case by the Supreme Court of Connecticut.

Respectfully submitted,

GEORGE R. TIERNAN,
215 Church Street,
New Haven, Connecticut 06510,
Attorney for Appellee.

May 10, 1972.



JUN 5 1972

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1336

In Re Application of FRE LE POOLE GRIFFITHS,
for Admission to the Bar,

Appellant.

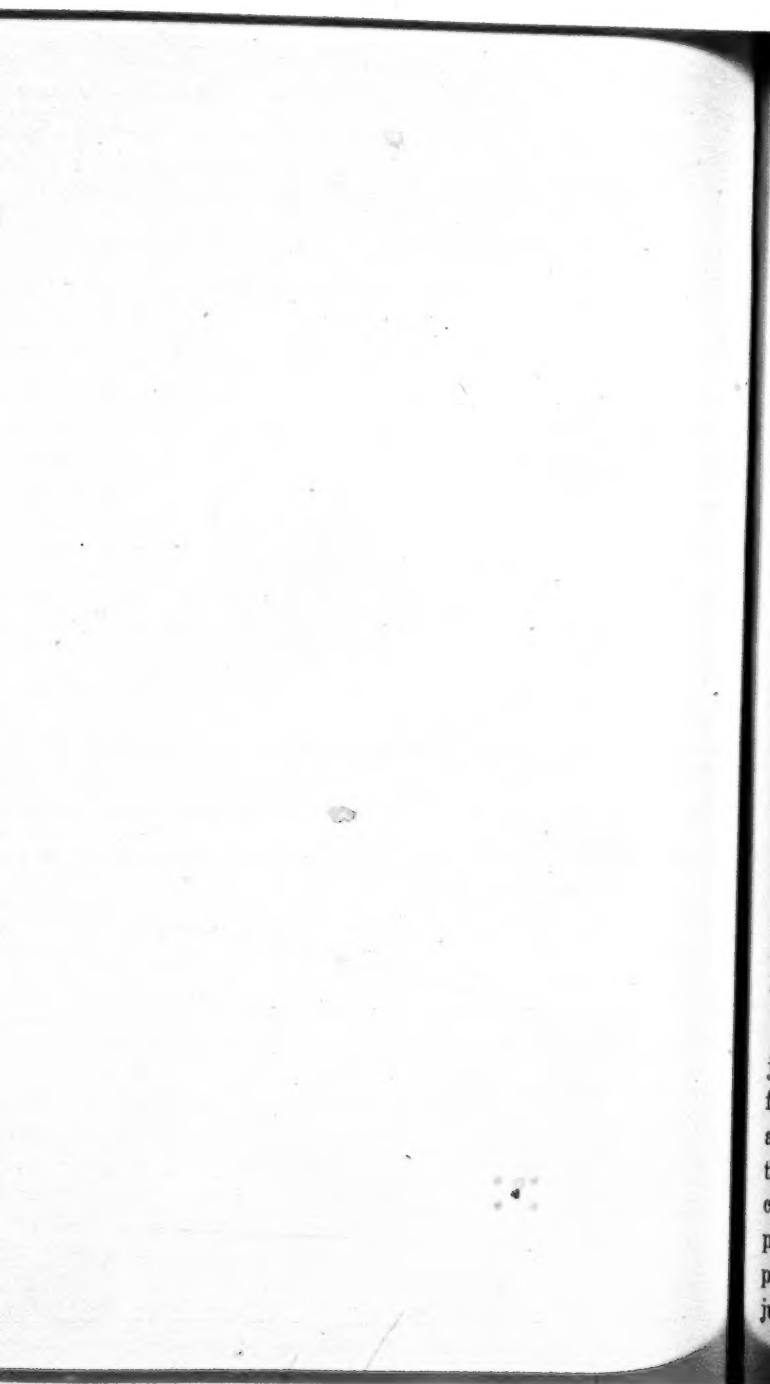
ON APPEAL FROM THE SUPREME COURT OF THE STATE
OF CONNECTICUT

SUPPLEMENTAL BRIEF FOR APPELLANT

R. DAVID BROILES
HOOPER, KERRY & CHAPPELL
200 Fort Worth Club Bldg.
Fort Worth, Texas 76102

MELVIN L. WULF
JOEL M. GORA
American Civil Liberties Union
Foundation
156 Fifth Avenue
New York, New York 10010

Attorneys for Appellant



IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1336

In Re Application of FRE LE POOLE GRIFFITHS,
for Admission to the Bar,

Appellant.

ON APPEAL FROM THE SUPREME COURT OF THE STATE
OF CONNECTICUT

SUPPLEMENTAL BRIEF FOR APPELLANT

Appellant files this supplemental brief to bring to the Court's attention a recent decision of the California Supreme Court, invalidating under the Equal Protection Clause that state's requirement that an applicant for admission to the bar be a United States citizen. *Raffaelli v. Committee of Bar Examiners, et al.*, No. S.F. 22841 (May 24, 1972). For the convenience of the Court, the California Supreme Court decision is set out below as an Appendix to this brief.

The California decision analyzes but rejects the various justifications offered to support the exclusion of aliens from the practice of law. Although the opinion purports, at footnote 10 *infra*, to distinguish the decision below, the reasoning and conclusions of the California Court are completely inconsistent with those of the Connecticut Supreme Court herein. The decision of the California Supreme Court provides another persuasive reason for noting jurisdiction in this case.

CONCLUSION

For the reasons set forth above, jurisdiction should be noted.

Respectfully submitted,

**R. DAVID BROILES
HOOPER, KERRY & CHAPPELL
200 Fort Worth Club Bldg.
Fort Worth, Texas 76102**

**MELVIN L. WULF
JOEL M. GORA
American Civil Liberties Union
Foundation
156 Fifth Avenue
New York, New York 10010**

Attorneys for Appellant

June 1972

APPENDIX

APPENDIX

Opinion of the Supreme Court of California

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

S.F. 22841

PAOLO RAFFAELLI,

Petitioner,

—v.—

COMMITTEE OF BAR EXAMINERS, THE STATE BAR
OF CALIFORNIA *et al.*,

Respondents.

By this application for original writ, petitioner Paolo Raffaelli seeks to compel respondent Committee of Bar Examiners to certify him to this court for admission to the practice of law.

The sole ground upon which respondent has refused to certify petitioner is that he is not a citizen of the United States. The question for decision, accordingly, is whether the statutory exclusion of aliens from the practice of law in this state (Bus. & Prof. Code, § 6060, subd. (a)) constitutes a denial of equal protection of the law (U.S. Const., 14th Amend.; Cal. Const., art. 1, §§ 11, 21). In the light of modern decisions safeguarding the rights of those among us who are not citizens of the United States, the exclusion appears constitutionally indefensible. It is the lingering

vestige of a xenophobic attitude which, as we shall see, also once restricted membership in our bar to persons who were both "male" and "white." It should now be allowed to join those anachronistic classifications among the crumbled pedestals of history.

Petitioner is a 36-year-old native-born citizen of the Republic of Italy. In 1959 he entered the United States as an exchange visitor. At the completion of the exchange program he returned to Italy for a brief period, then reentered the United States on August 14, 1961. On that date, he avers, he took up residence in California with the intention of abandoning his foreign domicile and establishing his permanent home here. Admitted as a foreign student, petitioner was thereafter authorized to remain in the United States until his education was completed.

Petitioner entered San Jose State College, and graduated in June 1966 with a bachelor's degree in Industrial Relations and Personnel Management. He was then admitted to the School of Law of the University of Santa Clara, and graduated with a law degree in June 1969. In September 1969 he took and passed the California Bar Examination.

Since that time petitioner has been employed as a law clerk by a California law firm, and has married an American citizen. By reason of that marriage he was granted the status of permanent resident alien on September 5, 1971, and will be eligible for naturalization in September 1974.

I

The sole basis for respondent's refusal to certify petitioner to this court is Business and Professions Code section 6060, which provides in subdivision (a) that among the requirements for admission to the California State Bar an

applicant must "Be a citizen of the United States."¹ Petitioner contends that his exclusion on the ground of alienage denies him equal protection of the law.

The principles governing this question were restated last term by the United States Supreme Court in the case of *Graham v. Richardson* (1971) 403 U.S. 365, 371-372: "The Fourteenth Amendment provides, '[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' It has long been settled, and it is not disputed here, that the term 'person' in this context encompasses lawfully admitted resident aliens as well as citizens of the United States and entitles both citizens and aliens to the equal protection of the laws of the State in which they reside. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Truax v. Raich*, 239 U.S. 33, 39 (1915); *Takahashi v. Fish & Game Comm'n*, 334 U.S. [410], at 420. . . .

"Under traditional equal protection principles, a State retains broad discretion to classify as long as its classification has a reasonable basis. [Citations.] . . . But the Court's decisions have established that classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny. Aliens as a class are a prime example of a 'discrete and

¹ See also rule II, section 22, subdivision (1), Rules Regulating Admission to Practice Law in California, following Business and Professions Code section 6068. Other prerequisites prescribed by section 6060 are that the applicant be of the age of majority and of good moral character, and have fulfilled certain qualifications relating to education, registration, and examination. A former requirement that the applicant also "Have been a bona fide resident of this State for at least two months immediately prior to the date of his final bar examination" was deleted by the Legislature in 1970. (Stats. 1970, ch. 251, p. 513, § 1.)

insular' minority (see *United States v. Carolene Products Co.*, 304 U.S. 144, 152-153, n. 4 (1938)) for whom such heightened judicial solicitude is appropriate. Accordingly, it was said in *Takahashi*, 334 U.S., at 420, that 'the power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits.' (Fns. omitted.)

We recognized these same principles in *Purdy & Fitzpatrick v. State of California* (1969) 71 Cal.2d 566, 578-579, concluding that discrimination on the basis of alienage "invokes a strict standard of review." We observed that because of the ever-present risk of prejudice "a special mandate compels us to guard the interests of aliens"; that "particular alien groups and aliens in general have suffered from such prejudice. Even without such prejudice, aliens in California, denied the right to vote, lack the most basic means of defending themselves in the political processes. Under such circumstances, courts should approach discriminatory legislation with special solicitude." (Fns. omitted; *id.* at p. 580.) (Accord, *Sei Fujii v. State of California* (1952) 38 Cal.2d 718, 730-731.)

It is not only the *basis* of the discrimination—alienage—which prompts the concern of the courts: no less significant is the *method* by which that discrimination is often practiced, i.e., by totally excluding aliens from engaging in certain occupations. Thus in *Purdy & Fitzpatrick* we admonished that "the state may not arbitrarily foreclose to any person the right to pursue an otherwise lawful occupation. Any limitation on the opportunity for employment impedes the achievement of economic security, which is essential for the pursuit of life, liberty and happiness; courts sustain such limitations only after careful scrutiny." (Fn. omitted.) (71 Cal.2d at p. 579; see also *id.* at p. 580,

fn. 30; accord, *Sei Fujii v. State of California* (1952) supra, 38 Cal.2d 718, 736.)

Over the years the United States Supreme Court has invoked these principles to strike down, as violations of equal protection of the law, state statutes excluding aliens from a variety of occupations. (See, e.g., *Yick Wo v. Hopkins* (1886) supra, 118 U.S. 356 (operating a public laundry); *Truax v. Raich* (1915) supra, 239 U.S. 33 (requirement that four out of five employees be citizens); *Takahashi v. Fish & Game Comm'n* (1948) supra, 334 U.S. 410 (commercial fishing in California offshore waters).) More recently, the courts have extended this constitutional protection both to occupations and to the receipt of governmental social benefits. Thus in *Purdy & Fitzpatrick* we declared unconstitutional an exclusion of aliens from employment on public works. In *Graham v. Richardson* (1971) supra, 403 U.S. 365, the United States Supreme Court invalidated statutes of two states denying welfare benefits to persons who are not citizens or, if aliens, have not resided in this country for 15 years. In *Chapman v. Gerard* (3d Cir. 1972) — F.2d — [40 U.S.L. Week 2565], the circuit court held unconstitutional an exclusion of alien students from a public scholarship fund. In *Dougall v. Sugarman* (S.D.N.Y. 1971) — F.Supp. — [40 U.S.L. Week 2304], the district court held that a state statute preventing aliens from applying for competitive civil service positions offended the equal protection clause. And in *Hosier v. Evans* (D.V.I. 1970) — F.Supp. — [39 U.S.L. Week 2035], that clause was invoked to strike down a refusal to enroll the children of alien temporary workers in the local public school system.

As authority for the proposition that the state may not arbitrarily deny any person the right to engage in "an

otherwise lawful occupation," our opinion in *Purdy & Fitzpatrick* (71 Cal.2d at p. 579, fn. 27) cites *Konigsberg v. State Bar of California* (1957) 353 U.S. 252. That case, together with its companion, *Schware v. Board of Bar Examiners* (1957) 353 U.S. 232, established the principle, which is controlling here, that a person who seeks to enter upon the occupation of a lawyer comes clothed with the protections of the Fourteenth Amendment. Thus in *Schware* (at pp. 238-239) the high court explained that "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. [Citations.] A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a *rational connection with the applicant's fitness or capacity to practice law*. [Citations.] Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory. Cf. *Yick Wo v. Hopkins*, 118 U.S. 356." (Fn. omitted; italics added.) And in *Konigsberg* the court reiterated (at p. 273) that "We recognize the importance of leaving States free to select their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner. . . . A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal."

On these grounds a growing number of federal district courts have recently struck down statutes requiring that an applicant to the bar be a resident of the state in question for a specified period of time prior to seeking admission. (*Potts v. Justices of the Supreme Court* (D. Hawaii 1971) — F.Supp. — [40 U.S.L.Week 2270]; *Lipman v. Van Zant* (N.D.Miss. 1971) 329 F.Supp. 391, 400-401; *Webster v. Wofford* (N.D.Ga. 1970) 321 F.Supp. 1259; *Keenan v. North Carolina Board of Law Examiners* (E.D.N.C. 1970) — F.Supp. — [39 U.S.L.Week 2193]; but see *Suffling v. Bondurant* (D.N.M. 1972) — F.Supp. — [40 U.S.L.Week 2643].) In each of these decisions the court held that the residence requirement bore “no rational relationship” to the applicant’s fitness to practice law, and hence constituted arbitrary and invidious discrimination in violation of the equal protection clause.

II

The question now presented is whether the foregoing analysis also applies to the citizenship requirement of Business and Professions Code section 6060. By way of introduction, a glimpse into the pages of history will be instructive.

The first statute regulating the practice of law in California limited membership in the bar to those who were (1) white, (2) male, and (3) citizens. (Stats. 1851, ch. 4, p. 48.) The first two qualifications remained the law of this state for a quarter of a century: several times reaffirmed by the Legislature, they were carried over into the codifications of 1872 as Code of Civil Procedure section 275. It was not until 1877 that the total exclusion

of nonwhites and women was abandoned. (Amends. to Codes, 1877-1878, ch. 600, p. 99.)

Beginning in 1861, by contrast, an applicant for admission to the bar was not required to be a citizen: an alien was also eligible, provided he had in good faith declared his intention to become a citizen. (Stats. 1861, ch. 49, p. 40.) A subsequent statute provided somewhat vaguely that "If an alien, admitted to practice law, fails to become naturalized within a reasonable time after he is eligible," his license would be revoked on motion of the Attorney General. (Stats. 1923, ch. 104, p. 233, § 3; repealed by Stats. 1963, ch. 79, p. 705, § 1.) And an early decision of the California Supreme Court held that "a person of Mongolian nativity" (i.e., racially Chinese) would be denied admission to the bar because he was ineligible for citizenship. (*In re Hong Yen Chang* (1890) 84 Cal. 163.)

Nevertheless, within these limitations aliens were admitted to the California bar for a period of 70 years. (See, e.g., *Howden v. State Bar* (1929) 208 Cal. 604.)² This situation prevailed in California until 1931, when the State Bar Act was amended to restrict membership, as in the early years of our statehood, to United States citizens. (Stats. 1931, ch. 861, p. 1761.)

In *Purdy & Fitzpatrick* we reiterated the now-settled rules that in reviewing a discriminatory statute based on alienage, "Not only must the classification reasonably re-

² At the national level, alien attorneys were significant figures on the legal scene throughout at least the first half of our history: as the United States Supreme Court observed in *Bradwell v. The State* (1872) 83 U.S. (16 Wall.) 130, 139, "Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal courts, who were not citizens of the United States or of any State." For statistics on the role played by immigrants in the professions, as well as the arts, sciences and industry in the 18th and 19th centuries, see John F. Kennedy, *A Nation of Immigrants* (1964), p. 66.

late to the purposes of the law, but also the state must bear the burden of establishing that the classification constitutes a necessary means of accomplishing a legitimate state interest, and that the law serves to promote a compelling state interest." (Fns. omitted.) (71 Cal.2d at p. 579.) We must measure against those rules the various state interests which respondent contends are served by the statute now before us. There are, we are told, five such interests:

1. *A lawyer must "appreciate the spirit of American institutions."* While laudable in intent, this subjective requirement has limited pragmatic effect. It cannot constitutionally authorize exclusion from the practice of law on the ground that the applicant holds particular beliefs concerning American institutions, however unorthodox those views may appear to the bar examiners: "The First Amendment's protection of association prohibits a State from excluding a person from a profession or punishing him solely because he is a member of a particular political organization or because he holds certain beliefs." (Baird v. State Bar of Arizona (1971) 401 U.S. 1, 6; accord, *Königsberg v. State Bar of California* (1957) *supra*, 353 U.S. 252.) Indeed, those beliefs may not even be a permissible subject of inquiry: "when a State attempts to make inquiries about a person's beliefs or associations, its power is limited by the First Amendment." (Baird v. State Bar of Arizona, *supra*, at p. 6.) Although a state may be able to discharge the "heavy burden to show that the inquiry is necessary to protect a legitimate state interest" as to questions concerning specific prior acts of the applicant, the latter's "views and beliefs are immune from bar association inquisitions designed to lay a foun-

dation for barring an applicant from the practice of law." (*Id.* at pp. 6, 8; accord, *In re Stolar* (1971) 401 U.S. 23, 30.)

What remains, then, is the state's undoubted legitimate interest that an applicant have a general understanding of the theory and practice of the American governmental and social system in which he must function. But there is no showing that the unvarying exclusion of aliens from admission to the bar in fact promotes that interest. Nor has it been established that aliens as a class are incapable of possessing such understanding. Knowledge of this kind is acquired in many ways, both formal and informal. It comes not so much from the accident of birth as from the experience of the daily life of the community and the role of government in that life. These manifestations unfold to everyone who has lived in America or taken an active interest in the American scene. And there is no prescribed minimum number of years that a person must reside in the United States in order thus to "appreciate" our institutions. Alexis de Tocqueville, after all, lived here for less than a year and never became an American citizen.

For a contemporary example we need only look to the case of the present petitioner. As noted above, he settled in California over a decade ago with the intent of becoming a permanent resident, and married an American girl; he received both his undergraduate and legal education here, and took and passed the California Bar Examination. To suggest that such a person lacks "appreciation of the spirit of American institutions" merely because he is not himself a citizen demonstrates the irrationality of excluding aliens on this ground.³

³ Nor is it rational to exclude aliens on the more specific ground that because of their origin they might not "know the law" of Cali-

2. *A lawyer must take an oath to support the Constitutions of the United States and California.* This requirement is prescribed by statute,⁴ and is constitutionally permissible. (See, e.g., *Law Students Research Council v. Wadmond* (1971) 401 U.S. 154, 163-164.) But its relevance must be clearly understood: an alien *can* take this oath, both legally and as a matter of fact. Respondent's position on this point is thus reduced to the claim that although an alien can take the oath, he cannot do so honestly; since he remains a national of his native land, it is argued, he cannot be loyal to the United States.

There are two answers to this contention. First, to inquire into the "loyalty" of a prospective lawyer is, for the reasons stated above, to skate on very thin constitutional ice indeed. (*Baird v. State of Arizona* (1971) *supra*, 401 U.S. 1; *In re Stolar* (1971) *supra*, 401 U.S. 23.) Second, we cannot say that aliens as a class are incapable of honestly subscribing to this oath. On the contrary, the United States Congress evidently believes they can do so: under federal law resident aliens may be conscripted into the armed forces of the United States (50 U.S.C.App. § 454), and in that event they take an oath declaring that they, like all other inductees, "will support and defend the Constitution of the United States of America against all enemies, foreign

fornia. That particular knowledge, obviously, can be insured by appropriate educational requirements and be tested by the California Bar Examination, as it was here. Respondent does not contend to the contrary.

⁴"Every person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California, and faithfully to discharge the duties of any [sic] attorney at law to the best of his knowledge and ability. A certificate of the oath shall be indorsed upon his license." (Bus. & Prof. Code, § 6067.)

and domestic," and "will bear true faith and allegiance to the same" (10 U.S.C. § 502). Such an oath is an even more explicit declaration than the simple affirmation required of California lawyers.⁵

Furthermore, the courts of California have repeatedly recognized there are no rational grounds for believing that all residents who are not also citizens are ipso facto lacking in loyalty or commitment to abide by the laws of the land. "It is common knowledge that several million aliens are living in this country and that the vast majority are peaceful and law-abiding. Undoubtedly, many are serving or have children serving in the armed forces. . . . [A] person does not demonstrate instability, nor does he show a tendency towards crime, simply because he is not a citizen of this country." (People v. Lovato (1968) 258 Cal.App.2d 290, 293, 296; see also People v. Satchell (1971) 6 Cal.3d 28, 38-39, approving the quoted reasoning of *Lovato*.)

Again, in *Sei Fujii v. State of California* (1952) *supra*, 38 Cal.2d 718, this court held the California Alien Land Law to be violative of the equal protection clause. We found no reasonable relationship between the statute's claimed purpose of restricting ownership of land to persons who were loyal to the state, and the classification which excluded from such ownership all aliens "ineligible for citizenship." In support of this conclusion we explained

⁵ Respondent seeks to distinguish the two oaths by arguing that an applicant to the bar anticipates greater monetary rewards and far less physical danger than an inductee, and hence has a stronger "motive to falsify." The argument is unworthy of respondent. To presume that the greater the prospect of financial gain, the more likely a future member of the bar of California will swear falsely, is both to demean the high purpose of the oath to support our Constitution and to cast an unwarranted aspersion upon all those who have taken that oath and now serve society as respected and honorable members of the bar.

(at pp. 732-733): "Just as eligibility to citizenship does not automatically engender loyalty or create an interest in the welfare of the country, so ineligibility does not establish a lack of loyalty or the absence of interest in the welfare of the country. Nor does it follow that a person has no stake in the economic and social fortune of a state merely because the federal law denies him the right to naturalization. His American-born children are citizens, and, having made his home here, he has a natural interest, identical with that of an eligible alien, in the strength and security of the country in which he makes a living for his family and educates his children."

Most recently, in *Purdy & Fitzpatrick* (71 Cal.2d at p. 582) we reiterated that "any classification which treats all aliens as undeserving and all United States citizens as deserving rests upon a very questionable basis. The citizen may be a newcomer to the state who has little 'stake' in the community; the alien may be a resident who has lived in California for a lengthy period, paid taxes, served in our armed forces, demonstrated his worth as a constructive human being, and contributed much to the growth and development of the state." (Fns. omitted.)

Respondent fails to show that such persons, as a class, cannot be trusted to swear truly to support the supreme law of their adopted homeland. Nor is there the slightest indication that the present petitioner cannot honestly take such an oath. The outright exclusion of aliens, accordingly, does not in fact promote the state's interest in insuring that an applicant to the bar will defend the Constitution to the best of his ability.

3. *A lawyer must remain accessible to his clients and subject to the control of the bar.* This heading groups two

concerns, both of which assertedly arise from the fact that under certain circumstances an alien may be subject to deportation or internment. To begin with, however, the possibility that an alien lawyer might voluntarily return to his native land is not significantly different, in today's highly mobile society, from the possibility that a citizen lawyer might voluntarily move to a different jurisdiction in the United States, e.g., in search of better employment opportunities. There is no showing that noncitizen members of the bar, as a class, will be more likely than citizens to make such a move without properly winding up their affairs and protecting the interests of their clients.

With respect to involuntary removal from practice, it is said that an alien lawyer is subject to deportation or internment in the event that war breaks out between the United States and his native land, or in similar situations of international emergency. But the risk of such an emergency is not foreseeable; and even if it eventuates, deportation or internment is by no means an inevitable consequence.⁶ More importantly, that risk is easily outweighed by the possibility that a lawyer, even though a citizen, may be involuntarily removed from his practice by death, by serious illness or accident, by disciplinary suspension or disbarment, or by conscription. In any of the latter circumstances the client will undergo the same inconvenience of having to obtain substitute counsel.

Even less persuasive is the concern that an alien lawyer, although practicing in California, might somehow by virtue of his alienage remain beyond the control of the bar itself. Such a person would obviously not be clothed with

⁶ During World War II, for example, German and Italian nationals were not interned unless they were suspected of disloyalty to the United States.

the formal immunity of an accredited diplomat, and would be no less liable to discipline or disbarment than any citizen lawyer.

4. "*The practice of law is a privilege, not a right.*" This adage is premised upon two theories, both of which have recently been rejected as outmoded by the United States Supreme Court. First, the "right-privilege" dichotomy is no longer relevant to the kind of constitutional inquiry in which we are here engaged. In dismissing the argument that aliens can be denied welfare on the ground of the state's "special public interest" in its resources, the high court explained that the doctrine "was heavily grounded on the notion that '[w]hatever is a privilege, rather than a right, may be made dependent upon citizenship.' [Citation.] But this Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege.' [Citations.]" (*Graham v. Richardson* (1971) *supra*, 403 U.S. 365, 374.)⁷

Second, the theory that the practice of law is a privilege and not a right—which has been invoked in the past to justify various legislative regulations of the profession (see, e.g., *Cohen v. Wright* (1863) 22 Cal. 293, 317, 319)—was seriously questioned by the Supreme Court in *Schwartz v. Board of Bar Examiners* (1957) *supra*, 353 U.S. 232, 239, fn. 5: "We need not enter into a discussion whether the practice of law is a 'right' or 'privilege.' Regardless

⁷ In any event, "One may well question the justification for this distinction when applied to exclude aliens. Because an occupation may be privileged need not mean that the city or state may exclude from it anyone at all, for example, Negroes, or Catholics, or persons of Italian nativity or descent." (Konvitz, *The Alien and The Asiatic in American Law* (1946) p. 179.)

of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace. *Ex parte Garland*, 4 Wall. 333, 379." Respondent seeks to minimize the effect of this language by asserting that it had "no apparent significance" in *Schware* and was there relegated to a footnote. But in *Hallinan v. Committee of Bar Examiners* (1966) 65 Cal.2d 447, 452, fn. 3, this court relied on prior opinions which "characterize a claim for admission to the bar as a claim of right entitled to the protections of procedural due process," and concluded it was "impossible for us to regard admission to the profession as a mere privilege." And the *Schware* footnote was squarely elevated to a textual holding in *Baird v. State Bar of Arizona* (1971) *supra*, 401 U.S. 1, 8, when the Supreme Court said, citing *Schware* and *Garland*: "The practice of law is not a matter of grace, *but of right* for one who is qualified by his learning and his moral character." (Italics added.) Manifestly we cannot undertake to exhume constitutional theories so freshly and firmly buried.

5. *A lawyer is an "officer of the court" and therefore "should be a citizen."* We agree with the premise, but the conclusion remains a non sequitur. The traditional expression that a lawyer is an "officer of the court" has not often been explicated. He clearly is not a public office-holder in the literal sense (*Cohen v. Wright* (1863) *supra*, 22 Cal. 293, 314-315), but we need not here explore the broader, metaphorical meanings of the phrase. Without detracting in any degree from the high responsibility and trust placed in members of the bar and their privileged and intimate

relationship with the courts of California, we perceive no demonstrable nexus between that status and a requirement that every lawyer be a United States citizen. The most that can be said is that an "officer of the court" should be able to appreciate the spirit of American institutions, subscribe to an oath to support the Constitution, remain accessible to his clients and subject to the control of the bar, and meet similar responsibilities. But these are the very grounds, as we have shown, which cannot rationally be invoked to justify the wholesale exclusion of aliens from the bar.

III

We conclude that the challenged classification does not have "a rational connection with the applicant's fitness or capacity to practice law." (*Schwartz v. Board of Bar Examiners* (1957) *supra*, 353 U.S. 232, 239.) A fortiori respondent has not sustained its burden of establishing that the classification—based as it is on the suspect factor of alienage—not only promotes "a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 597, and cases cited.)

Respondent relies nevertheless on a decision of this court, rendered shortly after the statutory exclusion of aliens was reenacted in 1931, which upheld that exclusion against a charge that it violated equal protection of the law. (*Large v. State Bar* (1933) 218 Cal. 334.) The opinion in *Large*, however, merely listed without discussion several of the traditional grounds for exclusion hereinabove shown to be without merit, and relied in particular on a North Carolina case decided in 1824—i.e., 44 years

before the ratification of the Fourteenth Amendment. In *Purdy & Fitzpatrick* (71 Cal.2d at p. 583) we reconsidered and overruled a contrary decision of the same vintage as *Large*, explaining that "recent developments in the law of equal protection have removed whatever vitality [the earlier cases in point] may have possessed at the time of their rendition." For the same reason the decision in *Large* no longer reflects current constitutional reality, and it is hereby overruled.*

Legal authors and commentators have called for an end to the exclusion of noncitizen lawyers from the bar: "In so far as admission to the practice of the professions is concerned, the statutes excluding aliens should be declared unconstitutional; because, though they profess to be measures adopted to safeguard the public safety and interest,

* The applicant in *Large* was an English solicitor who sought to qualify under a provision authorizing admission of foreign lawyers if they had been actively practicing in a common-law jurisdiction for at least four of the six years immediately preceding their application to the bar of California. This provision, however, was effectively nullified by the further requirement that the applicant be a United States citizen, as the naturalization process ordinarily required five years' continuous residence in the United States. Manifestly it was physically impossible for Mr. *Large* to be in both places at once—in England actively practicing law and in America fulfilling his residence requirement for citizenship.

Almost four decades later, nevertheless, the same dilemma continues to face all foreign attorneys who seek to qualify under the current version of the rule invoked in *Large*. Under federal law, naturalization generally requires five years' continuous residence in the United States; yet Business and Professions Code section 6062 provides both that a foreign attorney shall be a citizen (subd. (a)) and that he "shall have been actively and substantially engaged in the practice of law in [his native country] for at least four years out of the six immediately preceding the filing of his application for admission to practice in this state" (subd. (d)). Although there may be other ways for a foreign attorney to become a citizen and other ways for him to qualify for the bar of California, the foregoing irreconcilable statutory procedure is incongruous on its face.

the connection between competence and citizenship still remains to be established." (Konvitz, *op. cit. supra*, at p. 188; accord, Comment, *Aliens' Rights, the Public Interest, and the Practice of Foreign Law* (1958) 10 Stan. L.Rev. 777, 780.) Admission of such lawyers (upon their declaration of intention to become a citizen) is permitted by statute in some American jurisdictions, and in others by rule of court' (In re Chi-Dooch-Li (Wash. 1971) 488 P.2d 259). And there are judicial developments of significance: a recent decision of the Supreme Court of Alaska struck down a statutory requirement of citizenship for the practice of law in that state, on the ground that it is an unreasonable encroachment on the inherent judicial power to determine standards of admission to the bar.* In a well-reasoned opinion, the Alaska court reviews in detail each of the claimed state interests discussed hereinabove, and holds that none has a "rational connection" with an applicant's fitness to practice law. (Application of Park (Alaska 1971) 484 P.2d 690, approved in In re Chi-Dooch-Li, *supra*, at p. 260, fn. 1, of 488 P.2d.) The rationale is the same, it will be remembered, as that currently invoked by the federal courts in annulling on equal protection

* In the case at hand, petitioner likewise contends that section 6060 is invalid as an encroachment on the judicial power. Respondent contends in reply that our power in this regard is limited to imposing *additional* requirements for admission, over and above those prescribed by the Legislature, and that the latter (including, therefore, citizenship) are minimum requirements which may not be dispensed with. (In re Lavine (1935) 2 Cal.2d 324, 328.) Whatever the merits of respondent's position, it is clear that the Legislature is authorized only to prescribe *reasonable* restrictions within constitutional parameters on the admission to practice. (See, e.g., Brydonjack v. State Bar (1929) 208 Cal. 439, 443.) To determine whether the citizenship requirement is "reasonable," we must in any event make the foregoing inquiry into whether it in fact promotes any of the claimed grounds of state interest.

grounds the residence requirement for admission to the bar.¹⁰

The law of California today permits an alien to earn his livelihood within our state as a doctor, a dentist, a nurse, a banker, a certified public accountant, an engineer, an architect or a contractor. Moreover, the Attorney General has formally concluded under the authority of *Purdy & Fitzpatrick* that United States citizenship may not constitutionally be required of those who wish to pursue such occupations as teacher or peace officer (53 Ops.Cal.Atty. Gen. (1970) 63), pharmacist, psychologist, psychiatric technician, clinical social worker, private investigator, or insurance broker (55 Ops.Cal.Atty.Gen. (1972) 80). As the Attorney General explained, "It is well established that the purpose behind occupational licensing is to protect the public from unqualified practitioners, and it seems clear that citizenship bears no relationship to one's professional or vocational competency or qualification." (*Id.* at p. 82.)

In its own way, each of these professions is as sensitive a repository of public trust as the profession of attorney. Nevertheless an alien, however well qualified, is flatly denied the right to practice law in California by the challenged provision of the Business and Professions Code.

¹⁰ A contrary decision of the Connecticut Supreme Court (*In re Griffiths* (1972) — A.2d — [40 U.S.L. Week 2566]), may be distinguished on the ground that under Connecticut law a member of the bar is much more than a lawyer in the usual sense of the word. The court stressed the fact that in Connecticut a member of the bar is ipso facto a commissioner of the superior court, has statutory power to sign writs, issue subpoenas, take recognizances and administer oaths, and is entitled to command sheriffs and constables to issue orders "by authority of the State of Connecticut." These powers, the court concluded, give members of the Connecticut bar a "unique status," with public as well as private functions in the administration of justice in that state.

We conclude, as in *Purdy & Fitzpatrick* (71 Cal.2d at p. 585), that "The discrimination involved denies arbitrarily to certain persons, merely because of their status as aliens, the right to pursue an otherwise lawful occupation. The classification within the statutory scheme operates irrationally without reference to any legitimate state interest except that of favoring United States citizens over citizens of other countries. This latter objective does not reflect such a compelling state interest that it would permit us to sustain this kind of discrimination." Subdivision (a) of section 6060 offends the equal protection clauses of the United States and California Constitutions, and it is hereby declared void.

IV

There remains the question of remedy. Although petitioner asks for an original writ of mandate, he is entitled to a writ of review under California Rules of Court, rule 59(b), and we treat his application accordingly.¹¹ It is not necessary to further lengthen this opinion by reciting the history of petitioner's case after he was first notified of his ineligibility due to his alien status; from a review of the petition, reply, and exhibits, we are satisfied his application was timely filed.

¹¹ Rule 59(b) provides in part that "A petition to the Supreme Court to review any other action [i.e., other than a recommendation of disbarment or suspension] of the Board of Governors of The State Bar, or of any board or committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act, shall be filed within 60 days after written notice of the action complained of is mailed, postage prepaid, to the petitioner, addressed to him at his last known address appearing on the records of The State Bar." (See also Bus. & Prof. Code, § 6066.)

While admitting that petitioner has fulfilled the certification requirements relating to age, education, and passage of the California Bar Examination, respondent alleges it has not yet determined whether petitioner is "of good moral character." (Bus. & Prof. Code, § 6060, subd. (c).) To avoid undue delay, we prescribe a reasonable period within which respondent shall take whatever steps it deems necessary to make that determination.

Within 30 days after this opinion becomes final, respondent shall determine whether petitioner is of good moral character within the meaning of Business and Professions Code section 6060, subdivision (c). If petitioner is found to be of good moral character, respondent shall forthwith certify him to this court for admission to the practice of law.

MOSK, J.

WE CONCUR:

WRIGHT, C.J.

McCOMB, J.

PETERS, J.

BURKE, J.

SULLIVAN, J.



AUG 4 1972

MICHAEL BODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1336

In re Application of FRÉ LE POOLE GRIFFITHS,
FOR ADMISSION TO THE BAR,

Appellant.

ON APPEAL FROM THE SUPREME COURT OF CONNECTICUT

APPELLANT'S BRIEF

R. DAVID BROILES
HOOPER, KERRY, CHAPPELL & BROILES
200 Fort Worth Club Building
Fort Worth, Texas 76102

MELVIN L. WULF
JOEL M. GORA
American Civil Liberties Union
Foundation
156 Fifth Avenue
New York, New York 10010

Attorneys for Appellant

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1336

In re Application of FRÉ LE POOLE GRIFFITHS,
FOR ADMISSION TO THE BAR,
Appellant.

ON APPEAL FROM THE SUPREME COURT OF CONNECTICUT

APPELLANT'S BRIEF

Opinion Below

The Memorandum of Decision of the Superior Court, New Haven County, filed December 21, 1970, is not reported; it is set forth in the Appendix to the Jurisdictional Statement at pp. 17-20. The opinion of the Connecticut Supreme Court is reported at *Conn. Law Journal*, p. 1, February 15, 1972, — Conn. —; it is also set forth in the Appendix to the Jurisdictional Statement at pp. 22-39.

Jurisdiction

The judgment of the Connecticut Supreme Court was entered on February 15, 1972, and notice of appeal was filed in that court on February 22, 1972. The jurisdiction of the Supreme Court to review this decision by appeal is conferred by 28 U.S.C. Section 1257(2).

Questions Presented

1. Whether Connecticut Superior Court Rule 8(1), which requires that an applicant for admission to the bar be a citizen of the United States, denies to Appellant, a lawfully admitted resident alien, the equal protection of the laws.
2. Whether Rule 8(1) interferes with exclusive Federal power over immigration and naturalization, thus contravening the Supremacy Clause.
3. Whether Rule 8(1), as applied, unconstitutionally burdens Appellant's First Amendment right to determine her nationality, as guaranteed by international public policy.

Statutes Involved

CONNECTICUT PRACTICE BOOK, Section 8, Qualification for Admission:

"First, that he is a citizen of the United States."

(Relevant Constitutional provisions, statutes, court rules and treaties are set forth in the Appendix to the Jurisdictional Statement at pp. 43-49.)

Statement of the Case

Fré Le Poole Griffiths was born in the Netherlands on November 30, 1940. She received the equivalent of a Bachelor's degree from the University of Lyden and the

equivalent of an LL.B. degree from the University of Amsterdam (App. 33).^{*} In January of 1965, she came to the United States as a visitor. She worked in New York City in 1965 and through August 1966. She then lived in the District of Columbia until she moved to Connecticut.

In July, 1967 Ms. LePoole Griffiths married John Griffiths, an American citizen, and moved to Connecticut when her husband received an appointment to teach at Yale Law School (App. 35). She attended Yale Law School and received her LL.B. on June 9, 1969 (App. 28). In October, 1969, Ms. LePoole Griffiths took a position as a law clerk at the New Haven Legal Aid Bureau.

On March 7, 1970, Appellant filed her Application for Admission as an attorney to the Bar of Connecticut. The Affidavit of Age and Citizenship filed with the Application indicated that the applicant was not a citizen of the United States (App. 19). On May 4, 1970 she appeared for an interview with the Committee on Recommendations of the New Haven Bar (App. 30-38). The Committee denied Ms. LePoole Griffiths' application, finding that in all respects she was qualified for admission to take the bar examinations, except that she was not a citizen of the United States (App. 38-39) (App. J.S. 22). Rule 8(1) of the CONNECTICUT PRACTICE BOOK requires that an applicant for admission to the Bar be a citizen of the United States.

^{*} "App. ____" refers to the Joint Appendix.

"App. J.S. ____" refers to the Appendix to the Jurisdictional Statement.

"App. S.B. ____" refers to the Appendix to the Appellant's Supplemental Brief.

Although she is eligible for citizenship by virtue of her marriage to an American citizen, the Appellant has elected to remain a citizen of the Netherlands and has not filed the declaration of intent to become an American citizen authorized by 8 U.S.C. Sections 1427(f), 1430(a) (App. J.S. 22). There has never been any question of Appellant's readiness to subscribe to an oath to uphold the Constitution and laws of the United States and of Connecticut or to take the Connecticut attorney's oath.

Following the bar Committee's rejection of her application because she was not a citizen, Appellant thereupon petitioned the Superior Court for New Haven County for a decree that she be permitted to take the examination as a candidate for the bar and that she be declared eligible for such admission (App. J.S. 23). Her petition was denied on the ground that she did not meet the necessary qualification of being a citizen of the United States, which is the first requirement provided by Section 8 of the rules of the Superior Court governing admission to the Connecticut bar. PRACTICE BOOK, Section 8(1) (App. J.S. 21, 23).

From that judgment the Appellant appealed to the Supreme Court of Connecticut. She argued that Rule 8(1) discriminates unreasonably against aliens, depriving them of their right to equal protection of the law; that all forms of discrimination against aliens are presumed invalid unless the state shows an overwhelming or compelling interest in maintaining the discrimination; that the Rule interferes with the federal power over immigration; and, as applied to the Appellant, violates international public policy and the First Amendment of the United States Constitution by burdening her right freely to determine her nationality (App. J.S. 23). She further contended that

Rule 8(1) creates an unreasonable and arbitrary classification without rational relation to the applicant's fitness or capacity to practice law; that it violates equal protection by infringing fundamental personal rights without satisfying the more stringent tests established for such regulations; that it does not promote a compelling governmental interest and imposes an impermissible burden upon interstate travel (App. J.S. 23-24).

The Supreme Court of Connecticut overruled the Appellant's assignment of errors and upheld the constitutionality of Rule 8(1). With regard to Appellant's equal protection claim, that court held:

In our opinion, there is clearly a rational connection between a requirement of loyalty and allegiance to the state, with the concomitant adherence to its political and judicial system, and the exercise of those powers, participation in the state's judicial branch of government, and membership in what Mr. Justice Harlan of the United States Supreme Court has referred to as "a profession in whose hands so largely lies the safe-keeping of this country's legal and political institutions." *Konigsberg v. State Bar of California*, 366 U.S. 36, 52, 81 S. Ct. 997, 6 L. Ed. 2d 105. We deem it entirely reasonable that the Superior Court as a constitutional court requires that persons, to be admitted to assist the court in the administration of justice and the laws of the state, be citizens and not owe their primary allegiance to a foreign power (App., J.S. 31).

In reaching this conclusion, the court also ruled that even though any discrimination against aliens is "inherently suspect," Rule 8(1) is justified because "the requirement

of citizenship is not simply reasonable but is basic to the maintenance of a viable system of dispensing justice under our form of government" (App. J.S., 33-34).

With regard to Appellant's claim that Rule 8(1) interfered with federal power over immigration, the court said:

The intent of Section 8(1) is clearly neither to insure economic success for citizens as opposed to aliens nor to discourage aliens from settling within the jurisdiction. Rather, it was intended to serve a greater need than mere financial success for a selected class. We are persuaded that the rule is neither inconsistent with nor repugnant to the power over immigration conferred on Congress by article first Section 8 of the constitution of the United States (App. J.S., 37).

Finally, the court rejected the Appellant's claim that Rule 8(1) violated her First Amendment right, recognized in international law, freely to determine her own nationality.

SUMMARY OF ARGUMENT

I.

Connecticut Superior Court Rule 8(1), which excludes aliens from eligibility for admission to the practice of law, denies to Appellant, a lawful resident alien, the equal protection of the laws.

It is well settled that statutes or regulations which classify on the basis of alienage are inherently suspect and subject to the closest judicial scrutiny. *Graham v. Richardson*, 403 U.S. 365 (1971). Laws which affect important interests such as the right to pursue a profession are simi-

larly subject to close scrutiny. *Baird v. State Bar of Arizona*, 401 U.S. 1 (1971). These principles have recently been applied to strike down a variety of statutes which totally excluded aliens from public employment, educational benefits or professional status. Most recently, the California Supreme Court invalidated that State's requirement that members of the bar be American citizens. *Raffaelli v. Committee of Bar Examiners*, — Cal. 3d —, 496 P.2d 1264, 101 Cal. Rptr. 896 (1972) (App. S.B. 3-24).

Excluding aliens from the practice of law advances no compelling state interest and does not even bear a rational relationship to an applicant's fitness or capacity. The three reasons offered by the court below to justify the exclusion—(1) attorneys generally are "officers of the court" with special responsibilities, (2) in Connecticut, attorneys are given "extraordinary powers" as Commissioners of the Superior Court, and (3) aliens do not have the requisite loyalty and allegiance to the state—are all inadequate. See *Raffaelli v. Committee of Bar Examiners*, *supra*. The third set of reasons is particularly suspect because this Court has held that there is only a very narrow area of valid inquiry into a bar applicant's political beliefs and loyalties. *Law Students' Civil Rights Research Council v. Wadmond*, 401 U.S. 154 (1971). In any event, since aliens may serve in our armed forces and in the higher levels of government, there is no reason to presume that they cannot have the requisite allegiance to the state. Such absolute presumptions used to deny important rights are unconstitutional. *Reed v. Reed*, 404 U.S. 71 (1971).

II.

Rule 8(1) also infringes federal power over immigration, thus contravening the Supremacy Clause. *Graham v. Richardson*, *supra*; *Truax v. Raich*, 239 U.S. 33 (1915). As in *Graham*, the provision here burdens both the general congressional power to admit aliens to lawful residency and livelihood as well as a specific, comprehensive federal regulatory scheme, enacted in 1965. That arrangement, in 8 U.S.C. Sections 1151(a), *et seq.*, establishes categories of priorities for the preferential admission of aliens in the professions, including lawyers. Rule 8(1) interferes with this specific national policy of encouraging the immigration of persons like the Appellant. See *Dougall v. Sugarman*, 339 F. Supp. 906 (S.D.N.Y. 1971) (three-judge court), *prob. juris. noted*, — U.S. —, 40 U.S. Law Week 3588 (June 12, 1972).

III.

Finally, Rule 8(1) also violates the First Amendment by burdening Appellant's right, recognized by international law, freely to determine her own nationality. That right is particularly important with regard to women like Appellant, married to men of different nationalities. See Article 5, 1967 Declaration on the Elimination of Discrimination Against Women. Such policies have a close analogy in American constitutional law which affords a person freedom to determine what acts of fundamental allegiance he will engage in. *West Virginia Board of Education v. Barnett*, 319 U.S. 624 (1943). Rule 8(1) burdens that right by compelling Appellant to choose between her nationality and the practice of law. Such an effect, even though indirect, is unconstitutional. *Sherbert v. Verner*, 374 U.S. 398 (1963).

ARGUMENT

I.

Connecticut Superior Court Rule 8(1), which excludes aliens from the practice of law, is "inherently suspect" and discriminates unreasonably against aliens, thereby denying them the equal protection of the laws.

By court rule, Connecticut classifies applicants for admission to the bar into two categories: citizens and aliens. Citizens are eligible for admission; aliens are not. This classification, premised on alienage, is inherently suspect. It advances no compelling state interest, nor does it even bear any rational relationship to an applicant's fitness to practice law. Accordingly, it denies the equal protection of the laws to lawful resident aliens like the Appellant.¹

A. Rules which discriminate on the basis of alienage and totally exclude aliens from lawful occupations are inherently suspect, presumptively unconstitutional, and therefore subject to the closest judicial scrutiny.

There is little dispute over the general principles which govern the disposition of this case. A long series of decisions has established that the Equal Protection Clause of the Constitution applies to aliens as well as citizens. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Truax v. Raich*, 239 U.S. 33, 39 (1915); *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948). Classification on the basis of alienage is considered invidious and therefore particu-

¹ The majority of states similarly requires United States citizenship as a precondition of eligibility for the practice of law. See Ohira and Stevens, *Alien Lawyers in the United States and Japan: A Comparative Study*, 39 Wash. L. Rev. 412 (1964).

larly dubious. *Takahashi v. Fish and Game Commission*, *supra*; *Oyama v. California*, 332 U.S. 633 (1948); *Sei Fujii v. California*, 38 Cal. 2d 718, 242 P.2d 617 (1952); *Purdy & Fitzpatrick v. State of California*, 71 Cal. 2d 556, 79 Cal. Bptr. 77, 456 P.2d 645 (1969). Just recently this Court, in invalidating statutory arrangements which conditioned eligibility for welfare benefits on United States citizenship or on extended residence in the state, unanimously reaffirmed these principles:

... classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny. Aliens as a class are a prime example of a "discrete and insular" minority (see *United States v. Carolene Products Co.*, 304 U.S. 144, 152-53 n. 4 (1938)) for whom such heightened judicial solicitude is appropriate. Accordingly it was said in *Takahashi v. Fish and Game Commission*, 334 U.S. at 420, that "The power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits. *Graham v. Richardson*, 403 U.S. 365, 372 (1971).

The strictness of review to which an allegedly discriminatory state regulation is to be subjected is also affected by the relative importance of the subject with respect to which equality is sought. Employment is one of the subjects to which particular importance has been attributed. The established rule that the state may not arbitrarily deny to an individual the right to pursue a lawful occupation has been explicitly extended to the professions, and the notion that the practice of a profession is a mere 'privilege' which can be withheld on any ground whatever has been authorita-

tively rejected. *Baird v. State Bar of Arizona*, 401 U.S. 1 (1971) ("The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character." *Id.* at 8.); see also, *Konigsberg v. State Bar*, 353 U.S. 252, 262 (1957); *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957); *Spevack v. Klein*, 385 U.S. 511 (1967).

Thus, a rule like the one challenged here is subject to close scrutiny for two reasons. First, it embodies the kind of total exclusion or restriction of aliens from the pursuit of lawful occupations which this Court has invalidated over the years. See, e.g., *Yick Wo v. Hopkins*, *supra* (operating a public laundry); *Truax v. Raich*, *supra* (requirement that 80 per cent of employees be citizens); *Takahashi v. Fish and Game Commission*, *supra* (commercial fishing in offshore waters); see also, *Purdy & Fitzpatrick v. State of California*, *supra* (exclusion of aliens from employment on public works); *Department of Labor v. Cruz*, 45 N.J. 372, 212 A.2d 545 (1965) (same). Secondly, Rule 8(1) is subject to close scrutiny because it arbitrarily withholds the right to engage in a profession. In *Schware v. Board of Bar Examiners*, *supra*, this Court explained that,

A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. . . . A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the appli-

cant's fitness or capacity to practice law. . . . Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. 353 U.S. at 238-39 (footnotes and citations omitted).

Of course, the principle underlying both doctrines is that constitutional rights no longer "turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege'." *Graham v. Richardson*, *supra* at 374. Consequently, with regard to provisions like Rule 8(1) which discriminate against aliens and deny them access to employment or professional status, the normal presumption of constitutionality is reversed, and such provisions are presumptively unconstitutional. They can only be justified, if ever, by a showing that they are necessary to accomplish a compelling state interest. See, *Shapiro v. Thompson*, 394 U.S. 618, 637-38 (1969); *Graham v. Richardson*, *supra* at 376.

These principles, reaffirmed in *Graham v. Richardson*, have recently been applied to strike down a variety of statutes and rules totally excluding aliens from public employment, educational benefits or professional status. For example, in *Dougall v. Sugarman*, 339 F. Supp. 906 (S.D. N.Y. 1971), *prob. juris. noted*, — U.S. —, 40 U.S. Law Week 3588 (June 12, 1972), a three-judge court invalidated, as offensive to the Equal Protection Clause, a New York statute which prevented aliens from applying for competitive state civil service positions. A similar Vermont law was held unconstitutional, with the court ruling that in light of *Graham*, the issue did not even require the convening of a three-judge court. *Teitheid v. Leopold*, —

F. Supp. —, 4 CCH Empl. Prac. Dec. ¶7561 (D. Vt. 1971). In *Younus v. Shabat*, 336 F. Supp. 1137 (N.D. Ill. 1971) the court held that a state college cannot deny tenure to an otherwise qualified resident alien. Finally, in *Chapman v. Gerard*, — F.2d —, 40 Law Week 2565 (3rd Cir. 1972) the Third Circuit held that it was unconstitutional to exclude alien students from a public scholarship fund.

Most significantly, two state Supreme Courts have recently relied on these principles to hold that resident aliens may not constitutionally be excluded from the practice of law. *Application of Park*, 484 P.2d 690 (Alaska 1971); *Raffaelli v. Committee of Bar Examiners*, — Cal. 3d —, 496 P.2d 1264, 101 Cal. Rptr. 896 (1972) (App. S.B. 3-24). In *Park* the Alaska Supreme Court declared the requirement of citizenship for admission to the bar to be unreasonable, holding that notwithstanding "a possible conflict with his own national loyalty" a resident alien could nevertheless in good faith take an oath to support the Constitution of the United States. Throughout the proceedings, the Appellant has maintained, without contradiction, that she could take such an oath.² And in *Raffaelli*, the California Supreme Court, overruling its 1933 decision in *Large v. State Bar*, 218 Cal. 334, 23 P.2d 288 (1933), unanimously held that the citizenship requirement was unconstitutional:

² The court below attempted to distinguish *Park* on the ground that the applicant there, unlike the Appellant, had the intention to become a citizen. However the Alaska Supreme Court, though noting that *Park* had filed such a declaration, specifically stated: "We do not mean by this that the alien resident must have filed his official declaration of intent to become a citizen of the United States." 484 P.2d at 694, n. 18.

We conclude that the challenged classification does not have "a rational connection with the appellant's fitness or capacity to practice law." (*Schware v. Board of Bar Examiners* (1957) *supra*, 353 U.S. 232, 239). A fortiori respondent has not sustained its burden of establishing that the classification—based as it is on the suspect factor of alienage—not only promotes "a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose." (*Serrano v. Priest* (1971) 5 Cal. 3d 584, 597, and cases cited.). *Raffaelli v. Committee of Bar Examiners*, *supra*, 101 Cal. Rptr. at 905 (App. S.B. 19).

B. *The total exclusion of resident aliens from eligibility for admission to the bar advances no compelling state interest, nor does it even bear a rational relationship to any legitimate interest.*

Notwithstanding these settled principles, the Connecticut Supreme Court upheld the constitutionality of Rule 8(1). Appellant contends that Connecticut has failed to demonstrate that the citizenship requirement promotes a compelling interest and is necessary to further that interest. Indeed, as the California Supreme Court held in *Raffaelli*, such an exclusion does not even bear a rational relationship to an applicant's fitness or capacity to practice law.

In reaching its result, the court below ostensibly considered this Court's teaching in *Graham*, but concluded that the citizenship requirement was valid nevertheless:

Tested in the light of these requirements the provision of §8(1) of the Practice Book is not constitutionally invalid as to the petitioner as a denial to her of the equal protection of the laws. Attorneys are the means

through which the majority of the people seek redress for their grievances, enforcement and defense of their rights and compensation for their injuries and losses. The courts not only demand their loyalty, confidence and respect but also require them to function in a manner which will foster public confidence in the profession and, consequently, the judicial system. In this light the requirement of citizenship is not simply reasonable but is basic to the maintenance of a viable system of dispensing justice under our form of government (App. J.S. 34).³

Yet, it is never shown how Appellant will be "disabled" from functioning in a manner which will foster public confidence in the profession and the judicial system. The record in this case is totally without any basis to support this sweeping generalization. The State bar has never made any claim or showing that "confidence and respect" in the profession and judicial system hang on a thin thread of citizenship of all the members of the bar. Indeed, at least four States, California, Tennessee, Virginia and Illinois, have no restrictions against resident aliens being admitted to the bar.⁴ In fact, Illinois apparently dispenses with the bar examination where applicants have practiced in an English-speaking common law jurisdiction. Supreme Court of Illinois, Rules Governing Admission to the Bar, Rules 701, 705. Maine and Delaware apparently will allow an

³ The reference to *Graham* in the opinion below appears to be an afterthought. The bulk of the court's discussion of the equal protection issues is addressed to the conclusion that the citizenship requirements is reasonable (App. J.S. 29-33).

⁴ In *Raffaelli*, the California Supreme Court noted that aliens were admitted to practice law in that state for 70 years, from 1861 until 1931 (App. S.B., 10).

alien attorney to be admitted on motion, after three years practice in another state. Maine Rev. Stats. Ann., title 4, ch. 17, Section 802; Supreme Court of Delaware Rule 31(3). Georgia, Massachusetts, Montana, Oregon, Alaska and Washington will admit an alien to the bar though each requires some declaration of intent to become a citizen.⁵ There is not the slightest reason to believe that these states have suffered any ill effects from allowing aliens to practice there. See Ohira and Stevens, *Alien Lawyers—A Comparative Study*, *supra*; *Application of Park*, *supra*; *Raffaelli v. Committee of Bar Examiners*, *supra*. And, of course, all applicants for admission, whether citizens or not, are subject to the character and fitness inquiries authorized by this Court. See *Law Students' Civil Rights Research Council v. Wadmond*, 401 U.S. 154 (1971).

Nevertheless, the court below has identified a number of interests claimed to be advanced by the exclusion of aliens. None can withstand close scrutiny.

1. The "officer of the court" rationale.

Connecticut argues that attorneys are officers of the court, creating a dual trust which imposes upon them a duty to act with fidelity both to the courts and to their clients. Why an alien cannot discharge this dual obligation is not made clear. Why is it that a citizen of Holland, who lives in the United States, cannot fulfill her duties to her clients and the courts?

To be sure, a state has an interest in securing a high level of professional conduct. But there is no connection between the requirement of citizenship and the advancement of this

⁵ Ga. Code Ann. Section 9-104; Oregon Supreme Court, Rules on Admission of Attorneys, Rule 4.05(1).

interest. The assumption below that an attorney as an officer of the court must be a citizen is entirely unreasoned and has been severely questioned in the literature. Konvitz, *The Alien and Asiatic in American Law*, 188 (1946); Fisher and Nathanson, *Citizenship Requirements in Professional and Occupational Licensing in Illinois*, 45 Chi. B. Rec. 391 (1964). Reliance on the talismanic concept that an attorney is an "officer of the court" cannot be a substitute for careful analysis. The word "officer," in many contexts, is used to indicate persons holding a position of trust within the government. Assuming *arguendo* that aliens could be barred from such positions, *but see, e.g., Dougall v. Sugarman, supra*, the word "officer" as applied to lawyers conveys quite a different meaning. 20 Am. Jur. 2d, *Courts*, Section 4. Although in a very limited sense an attorney is a public officer, he does not come within the meaning of such terms as used in statutory or constitutional provisions. 7 Am. Jur. 2d, *Attorneys at Law*, Section 3, p. 45. Indeed, Article I, Section 6 of the Constitution provides that "no Person holding any Office under the United States" shall be a member of either house during his continuance in office. Yet it has never been suggested that attorneys, particularly those admitted before federal courts, being "officers of the court," could not serve as Senators or Representatives.*

Nor can it be argued that there is something inherently inconsistent between being an officer of the court and being

* Interestingly, counsel have been unable to find any provision in the federal statutes which specifically requires that United States judges be either lawyers or citizens. Of course, the Constitution requires that members of the House (Article I, Section 2) and Senate (Article I, Section 3) and the President (Article II, Section 1) be citizens of the United States.

This Court's Rules governing admission to its bar do not require that the applicant be a citizen of the United States. Rules of the Supreme Court of the United States, Rule 5.

an alien, particularly since it is possible for aliens to practice law in several American states, Ohira and Stevens, *Alien Lawyers in the United States and Japan*, *supra* at 415, 419, 429. In all those states attorneys are of course "officers of the court" as much as they are elsewhere. As this Court observed a century ago: "Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal courts, who were not citizens of the United States or of any State." *Bradwell v. State*, 21 L. Ed. 442, 16 Wall. 130, 139 (1872). In *Raffaelli* the California Supreme Court provided the appropriate response to the "officer of the court" rationale:

Without detracting in any degree from the high responsibility and trust placed in members of the bar and their privileged and intimate relationship with the Courts of California, we perceive no demonstrable nexus between that status and a requirement that every lawyer be a United States citizen. The most that can be said is that an "officer of the court" should be able to appreciate the spirit of American institutions, subscribe to an oath to support the Constitution, remain accessible to his clients and subject to the control of the bar, and meet similar responsibilities. But these are the very grounds, as we have shown, which cannot rationally be invoked to justify the wholesale exclusion of aliens from the bar, 101 Cal. Rptr. at 906 (App. S.B. 18-19).

2. Attorneys as "Commissioners of the Superior Court."

The Connecticut Supreme Court also justified Rule 8(1) on the ground that each attorney in Connecticut is also

a Commissioner of the Superior Court and thus granted "extraordinary powers to perform their duties . . ." (App. J.S. 28).⁷

An attorney, as Commissioner of the Superior Court "may, within the state, sign writs, issue subpoenas, take recognizances and administer oaths." Conn. Gen. Stat. Section 51-85. In Connecticut, civil suits are instituted by an attorney preparing a writ, summons and complaint, signing these as a Commissioner of the Superior Court, giving them to a sheriff, deputy or constable and having them served on the defendant. The papers are returned, after service, to the attorney, who files them with the clerk of the court to which they are returnable. Attorneys also issue subpoenas by signing them, giving them to a sheriff, deputy, constable or independent person and having them served on the witness.

These are not "extraordinary powers." Appellant is aware of no reported cases where these "powers" have been subject to abuse by attorneys. The record in this case contains no evidence tending to show that these "powers" are likely to be more abused by alien attorneys than by attorneys who are citizens. There has been no showing that the exclusion of aliens in any way protects the public from any abuse of these powers.

These same "extraordinary powers" are delegated to clerks and assistant clerks of the Superior Courts, Courts of Common Pleas and Circuit Courts. Conn. Gen. Stat. §§51-52; 51-146; 51-168; 51-252; 51-253. Only in the Court of Common Pleas must the clerk be an attorney. Assist-

⁷ In *Raffaelli*, the California Supreme Court relied on this argument to distinguish the decision below, 101 Cal. Rptr. at 906, n. 10 (App. S.B., 22).

ant clerks in any of these courts do not have to be attorneys, and in fact, many assistant clerks in Connecticut are not attorneys. Clerks and assistant clerks may issue writs, summons or attachments. Conn. Gen. Stat. §52-89. They have the same powers as the Commissioner of the Superior Court in that respect. These "carefully guarded" powers, then, have been delegated to those who are not attorneys.* More importantly, there is no requirement that these clerks and assistant clerks even be citizens.

Not only do non-attorneys possess these "extraordinary powers," but historically there is no relationship between the citizenship requirement for attorneys and the delegation of these "powers." These powers were delegated to attorneys in 1921. *Public Acts*, 1921, c. 67. The requirement that attorneys be citizens first appeared in 1879. 1879 *Practice Book* §§4(3) and 8. Citizenship was a requirement for admission to the bar long before attorneys assumed the powers of Commissioners of the Superior Court.

The Connecticut Supreme Court also reasoned that attorneys are vested with a portion of the "sovereign power of the government to be exercised for the public good" (App. J.S. 28). What is referred to is the authority to command sheriffs and constables to serve papers, writs and subpoenas. Again, assuming these powers can be characterized as "extraordinary," there is no showing that an alien cannot faithfully perform those functions. An alien attorney would be under the control of the bar

* In the Federal District Court in Connecticut, all writs, summons, complaints, attachments and subpoenas are issued by the clerk of the District Court. The clerk of that court is not an attorney.

just as much as any other attorney. He would be liable to disciplinary proceedings as well as disbarment.*

The powers of an attorney as a commissioner of the Superior Court are not extraordinary. They are not subject to abuse by Connecticut attorneys so that one must be a citizen in order to be an attorney. There is no connection between these "powers" and the requirement of citizenship.

3. The requirements of an oath, "loyalty and allegiance to the state" and "adherence to its political and judicial system."

The gravamen of the decision below is that a state may require fealty to it as the precondition for admission to its bar and that non-citizens who "owe their primary allegiance to a foreign power" cannot meet that condition (App. J.S. 31). Similarly the decision below seems to suggest that resident aliens cannot in good faith take an oath to uphold the Constitution of the United States and of Connecticut (App. J.S. 28-29).

In Connecticut newly admitted attorneys take both the attorney's oath and the oath required of Commissioners

* Additionally, while residency is a requirement for admission to the bar, once admitted, an attorney may move from Connecticut and remain a member of the Connecticut bar. Thus, appellant's husband, as a Connecticut attorney, could move to the Netherlands and become a permanent resident, and still remain a member of the Connecticut bar. On the other hand, his wife, because she is an alien, cannot do this when she has chosen to be and is a resident of Connecticut. Presumably one could, as a Connecticut attorney renounce his citizenship, become a citizen of another country, and remain a Connecticut attorney. Citizenship is a requirement for admission to the bar. The rules are silent as to whether it is a requisite for continued membership in the bar.

of the Superior Court. See Conn. Gen. Stat. Section 1-25.¹⁰ The Commissioner's oath requires a pledge to support the Constitution of the United States and of Connecticut (App. J.S. 28). Appellant stands ready to take that oath and the Connecticut attorney's oath.

Of course, should the constitutional oath be interpreted as requiring an attorney to be a citizen then it would be subject to the challenges made against Rule 8(1). The oath after all is not an end in itself. It can be validly required only if reasonably related to proper requirements for admission as an attorney. The question should turn not on the taking of an oath but upon the fulfillment of the requirement to support the respective Constitutions. See *Law Students' Civil Rights Research Council Inc., et al. v. Wadmond, et al.*, *supra* at 163-66.¹¹

The argument that an alien cannot take an oath to support the Federal and State constitutions cannot be sustained in view of the fact that resident aliens are subject to the draft, see *Astrup v. Immigration and Naturalization Service*, 402 U.S. 509 (1971), and are permitted to enlist in the armed services, 10 U.S.C. Sections 510(b)(1),

¹⁰ The attorney's oath in effect requires a pledge to be honest and scrupulous (App. J.S. 44).

¹¹ In any event, since the Commissioner's oath is required by a statute, it can have no effect on qualification as an attorney. The qualifications for an attorney are within the *exclusive* province of the judiciary. Any legislative requirement violates the Connecticut Constitution. *Heiberger v. Clark*, 148 Conn. 177, 169 A.2d 652 (1961). Similarly, there is ample authority for the power of the admitting authority to waive the requirement that an applicant take a particular form of oath. Conn. Gen. Stat. Section 1-22 provides that where a person cannot take an oath, or the court finds another ceremony would be more binding, the court "may permit or require any other ceremony to be used."

591(b)(1), 3253(c) and 8253(c), which require subscribing to an oath even more demanding than Connecticut's.¹² Evidently the United States Congress believes that aliens can subscribe to such an oath in good faith.

More importantly, the decision below, justifying the exclusion of aliens on the ground that their status bespeaks a lack of primary loyalty to or belief in the government or the state, contravenes the rulings in the trilogy of bar admission cases decided by this Court. *Baird v. State Bar of Arizona*, 401 U.S. 1 (1971); *In re Stolar*, 401 U.S. 23 (1971); *Law Students' Civil Rights Research Council v. Wadmond*, 401 U.S. 154 (1971). In those cases, this Court defined a very narrow area of legitimate inquiry into the political beliefs and loyalties of applicants to the bar, limited to insuring that an applicant has "the qualities of character and the professional competence requisite to the practice of law." *Baird v. State Bar of Arizona*, *supra* at 7. And only two kinds of political inquiries may legitimately be made by the state: (1) whether the applicant has been a knowing member of an organization advocating the overthrow of the government by force or violence and shared the intent to further the organization's illegal goals, and (2) whether the applicant can in good faith take an oath to uphold the Constitution. In fact, New York's requirement that the applicant "believes in the form of the government of the United States and is loyal to such government" was upheld solely because it had been construed to require only a good faith willingness to swear to uphold the Constitution. *Law Students' Civil Rights Research Council v. Wadmond*, *supra* at 162-63.

¹² An inductee must take an oath to "support and defend the Constitution of the United States of America against all enemies foreign and domestic" and to "bear true faith and allegiance to the same." 10 U.S.C. Section 502.

Even assuming *arguendo* that broader inquiries into loyalty can be made, it is simply irrational to assume that all aliens automatically lack loyalty or primary allegiance to the American political system. As the courts of California have repeatedly recognized, "there are no rational grounds for believing that all residents who are not also citizens are ipso facto lacking in loyalty or commitment to abide by the laws of the land." *Raffaelli v. Committee of Bar Examiners, supra*, 101 Cal. Rptr. at 903 (App. S.B. 14). Our national experience with resident aliens bears out this contention. We afford substantial societal responsibilities to aliens. Although they are barred by the Constitution from holding the office of President or serving in the Congress, virtually every other occupation, including many far more sensitive than the practice of law, is open to them. For example, aliens are not legally prohibited from holding any position in the Department of Defense or the Atomic Energy Commission and are eligible for certain positions in the Department of State and the United States Information Agency. See, United States Civil Service Commission, "Federal Employment of Non-Citizens" (BRE-27, 1970). Nor are they barred from employment in the highest levels of American government; by virtue of the "Excepted Service" they may be appointed to policy-making federal positions. See United States Civil Service Commission, "The Federal Career Service at Your Service," 12-13 (1969).¹³ Accordingly, an alien's "primary allegiance to

¹³ In *Dougall v. Sugarman, supra*, the court specifically rejected the state's contention that it could exclude aliens from the state civil service because the government is entitled to conduct its affairs through persons who have undivided loyalty. The court found no connection between the requirement of loyalty to the government and any compelling state interest. This argument would apply *a fortiori* to the case of private attorneys.

a foreign power" is, by itself, a constitutionally impermissible basis for denying admission to the bar. The requirement of citizenship is far too broad a means of implementing a goal which can be achieved by narrowly prescribed criteria governing admission to the bar.

In effect, Connecticut has created an absolute presumption that aliens cannot possess the requisite loyalty and allegiance. Such a presumption is not analytically different than presuming that all women are less able than men to administer estates, *Reed v. Reed*, 404 U.S. 71 (1971) or presuming that all unwed fathers are unfit parents, *Stanley v. Illinois*, 31 L. Ed.2d 551 (1972). Classifications which embody such presumptions are offensive to the requirements of equal protection of the laws.

As the California Supreme Court succinctly noted in response to similar arguments:

First, to inquire into the "loyalty" of a prospective lawyer is . . . to skate on very thin constitutional ice indeed. (*Baird v. State of Arizona*, (1971) *supra*, 401 U.S. 1; *In re Stolar*, (1971) *supra*, 401 U.S. 23). Second, we cannot say that aliens as a class are incapable of honestly subscribing to this oath. *Raffaelli v. Committee of Bar Examiners*, *supra*, 101 Cal. Rptr. at 902 (App. S.B. 13).

In sum, none of the reasons offered by the Court below to sustain the citizenship requirement for admission to the bar are valid bases for the total exclusion of aliens from the practice of law. This Court should hold, with the California Supreme Court, that:

In the light of modern decisions safeguarding the rights of those among us who are not citizens of the United States, the exclusion appears constitutionally indefensible. It is the lingering vestige of a xenophobic attitude which . . . also once restricted membership in our bar to persons who were both "male" and "white." It should now be allowed to join those anachronistic classifications among the crumbled pedestals of history. *Raffaelli v. Committee of Bar Examiners, supra*, 101 Cal. Rptr. at 898 (App. S.B., 3-4).

II.

Superior Court Rule 8(1) infringes upon the federal power over immigration.

In *Graham v. Richardson*, this Court held that statutes which discriminated against aliens in the distribution of welfare benefits not only denied them the equal protection of the laws but also contravened the federal government's "broad constitutional powers" over aliens. 403 U.S. at 377. In so ruling, this Court reaffirmed a principle dating back a half century:

The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government. *Fong Yue Ting v. United States*, 149 U.S. 698, 713 . . . The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the

practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality. *Truax v. Raich*, *supra*, at 42 (1915). See also, *Takahashi v. Fish and Game Commission*, *supra*.

In *Graham* this Court identified, as part of a "comprehensive" Congressional plan for the regulation of immigration and naturalization, an overriding national policy to provide economic security for lawfully admitted aliens and to allow them freely to travel and take up abode in the various States. Since the statutes in question were inconsistent with those federal policies, they encroached upon "exclusive federal power" and were constitutionally impermissible.

The court below held *Graham* inapplicable on the theory that Rule 8(1) involves only an indirect and remote interference with national immigration policy. It is true that Rule 8(1) does not explicitly attempt directly to regulate or control immigration. But explicit, direct interference is not the only sort of state interference which is precluded by the exclusive competency over immigration matters vested in the Congress. Rule 8(1) interferes with two other overriding federal policies, parallel to those identified in *Graham*.

In the first place, Rule 8(1) burdens the general congressional power to admit aliens. This is precisely what this Court held to be prohibited in *Graham v. Richardson*,

supra and *Truax v. Raich*, *supra*. It is true that many of these cases involved denial of access to "common occupation of the community" (*Truax v. Raich*, *supra* at 41). But *Takahashi* suggests that the alien in fact has a right to work in his specific occupation. Indeed, if the alien involved happens to be one with a profession, to deny him the opportunity to acquire a license on the sole basis of his alienage amounts to exactly what this Court has held to be an impermissible interference with Congress' power. In the case of an alien professional, the burden imposed on his right to entry is even heavier than in the case of others who can more easily change from one occupation to another to which no anti-alien restrictions apply. For a profession is not only a way of earning a livelihood. It also is the choice of a specific way of life which cannot be changed easily as one moves from one country to another.

Quite apart from the burden Rule 8(1) imposes upon appellant's congressionally granted right to live in the United States, the requirement in question interferes with a comprehensive regulatory scheme enacted by Congress in the exercise of its exclusive power over immigration. The criterion applied by this Court to determine the validity of state laws in light of treaties or federal laws on the same subject is whether the state law in question stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Graham v. Richardson*, *supra* at 377-80. If the state legislation concerned affects the field of international relations or deals with the rights, liberties, and personal freedom of human beings, it is to be subjected to closer scrutiny than it might be otherwise.

In 1965 Congress revised the Immigration and Nationality Act in important respects. This Act now amounts to "a comprehensive federal scheme for immigration which seeks to regulate alien employment to some extent" *Purdy & Fitzpatrick v. State*, 79 Cal. Rptr. 77, 84, 456 P.2d 645 (1969). The scheme set up by the Act is contravened by Rule 8(1).¹⁴

The previous immigration statute established a system which accorded preferential status to certain categories of would-be immigrants primarily on the basis of national origin. But the Act as revised established a totally new scheme of preferences "designed to be fair, rational, humane, and in the national interest." Senate Report No. 748, Judiciary Committee, First Sess., 89th Cong.; 1965 *U.S. Code Cong. & Adm. News*, pp. 3328, 3332. One important purpose of the revised Act was to protect the American labor market from the adverse effects from the entrance of foreign workers not needed in this country. *Id.* at 3333. At the same time, the Act sought to assure that among the aliens to be admitted a high preference would be accorded to those "whose admission will be substantially beneficial to the national economy, cultural interests, or welfare of the United States." *Id.* at 3332.

Thus, the legislative scheme, insofar as relevant to the present issue, is briefly as follows: 8 U.S.C. §1151(a) establishes a limit to the total number of aliens to be admitted for permanent residence in each fiscal year. 8 U.S.C. §1153 establishes categories of preference priorities. First priority is given to two categories of immigrants who qualify

¹⁴ The statutory and regulatory material is set forth at App. J.S. 45-48.

for such priority under the "foremost consideration" of "reunification of families." *Id.* at 3332. Immediately thereafter comes the preferential category of "qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States." Under 8 U.S.C. §1101 (32), "[t]he term 'profession' shall include but not be limited to architects, engineers, *lawyers*, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies or seminaries." Nevertheless, this category of aliens shall be excluded, "unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of the application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed." 8 U.S.C. §1182(a)(14). The Secretary of Labor has in fact made a general determination to this effect as to all persons "who received an advance degree in a particular field of study from an institution of higher learning accredited in the country where the degree was obtained (comparable to a Ph.D. or master's degree given in American colleges or universities)" 29 C.F.R. (1969) pt. 60.2(a) and Schedule A, Group 1.

It follows from these provisions that it is the policy of the Federal Government to encourage the immigration of persons who, like Appellant, have received advanced pro-

fessional training. In *Graham v. Richardson*, *supra*, this Court invalidated laws which denied welfare benefits to aliens because such statutes imposed "auxiliary burdens" upon aliens whom Congress sought to protect. 403 U.S. at 379. And in *Purdy & Fitzpatrick v. State*, *supra*, the California Supreme Court struck down a California statute prohibiting employment of aliens on public works, among other reasons, because it *potentially* presented a conflict with the Federal Act and determinations made pursuant thereto by the Secretary of Labor. Appellant submits that in this case, in which the conflict between Rule 8(1) and federal immigration policy is actual and present, the Rule can *a fortiori* not be upheld.

The response of the Connecticut Supreme Court to these arguments is inapposite. The court reasoned that Rule 8(1) could be sustained because it had "but the slightest effect on the millions of aliens in this country" and would "hardly affect the general balance of alien population" (App. J.S. 36).

The court reached this conclusion by interpreting the goals behind federal immigration laws in terms of *Shapiro v. Thompson*, 394 U.S. 618 (1969) so that Rule 8(1) would be unconstitutional only if it unreasonably burdened or restricted interstate movement of aliens. In *Graham v. Richardson* this Court specifically declined to rule on the scope of *Shapiro v. Thompson* as applying the right to travel to aliens. But in *Graham* this Court did rule that once admitted, an alien cannot be subjected to discriminatory laws of the states, because to allow this would be tantamount to the assertion of the state's right to deny the aliens *right to entrance and abode into this country*. Moreover, the intrusion on exclusive federal power is not to

be tolerated merely because it affects only a small number of aliens. In *Sailer v. Leger*, 403 U.S. 365 (1971), the companion case to *Graham*, the discriminatory state provision burdened a class of only 65 to 70 persons, yet it was held violative of federal policy. See *Dougall v. Sugarman*, *supra* at 910, n. 8. The Connecticut Supreme Court misconstrued the scope and purpose of federal control over immigration, the goals of the statutory program and the decisions of this Court.

That court also asserted that "The intent of §8(1) is clearly neither to insure economic success for citizens as opposed to aliens nor to discourage aliens from settling within the jurisdiction"; Rule 8(1) "was intended to serve a greater need . . ." (App. J.S. 37). There is no statement in the opinion as to what is the "greater need" or what was "intended" by Rule 8(1).

The Superior Court decision (App. J.S. 20), however, provides some insight concerning this "greater need." That court pointed out, in justifying the requirement of citizenship for lawyers, that citizenship is required in Connecticut for licensing in the following activities: Medicine and Surgery, Osteopathy, Podiatry, Pharmacy, Embalmers and Funeral Directors, Ownership of a Barbership or Barber College, Hairdressers and Cosmeticians, Hypertrichologists (hair removers), Architects, Accountants and Sanitarians (App. J.S. 20). One is tempted to wonder what "greater need" the requirement of citizenship was "intended" to promote with regard to barber shop owners, hairdressers, embalmers, sanitarians, hair removers and lawyers. The "intent" of Rule 8(1) is irrelevant. Its effect is to contravene exclusive federal control over immigration. There-

fore, Rule 8(1) conflicts with the Supremacy Clause and is unconstitutional.

III.

Superior Court Rule 8(1) violates the First Amendment by burdening Appellant's right, recognized in international law and public policy, freely to determine her own nationality.

Attitudes towards the concept of nationality have changed. If in earlier days nationality was regarded primarily as a privilege, more recently it is increasingly looked upon as an instrument for securing the rights of individuals in the national and international sphere. See Lauterpacht, Foreword to *Weis, Nationality and Statelessness in International Law*, p. XI (1956). Concern has been displayed in international law literature about the inhumane application of principles of nationality, for instance, to deprive people of their citizenship or confer upon them a nationality without their consent or to discriminate against those living in a country without having its nationality. See van Panhuys, *The Role Of Nationality In International Law*, 232-239 (1959). This concern found expression in article 15 of the Universal Declaration of Human Rights which reads:

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Thus, one of the most important, emerging principles of international law is that the individual should have the

right to freely determine his or her nationality. That principle is particularly important with regard to women like Appellant who have husbands whose nationality differs from their own, because of the tendencies to require them to adopt their husband's nationality.

Even before the adoption of this Declaration it had been recognized that women married to men with nationalities different from their own, like Appellant, run a greater risk of interference with the free exercise of their rights with respect to nationality than most people. This is at least partly due to the fact that couples of mixed nationality most often live in the husband's country of origin. Concern for this matter was and should be all the stronger since the position of women in and outside of the family is becoming more and more independent from and equal to, that of men, and the law is adapting itself to the new requirements of society. The number of women in the professions has increased, while due to the ever-improving means of communication between citizens of different parts of the world, the incidence of marriage between nationals of different countries is likely to continue increasing.

Several international Conventions have sought to safeguard the right of a woman married to a man with a nationality different from her own to retain her own nationality, if she chooses to, and her right not to be discriminated against as a result of such a choice. Most recently, in 1967, the United National General Assembly unanimously adopted the Declaration on the Elimination of Discrimination against Women, Article 5 of which reads:

Women shall have the same right as men to acquire, change or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife

either by rendering her stateless or by forcing on her the nationality of her husband.

All these international instruments specifically recognize the fact that a woman marrying a husband with a nationality different from her own may often not wish to change her own nationality as a result of such marriage, and have a right to act according to such wishes. Plainly it is a complete frustration of such international law and policy to force a woman to give up her profession in order to exercise the fundamental right to retain her nationality.

The concept underlying these developments in international law finds a close analogy in United States constitutional law which recognizes that an individual must be free to determine what acts of fundamental allegiance he chooses to engage in. *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943) (holding it offensive to the most fundamental meaning of the First Amendment to force a person to engage in an act of allegiance).

Even though Rule 8(1), as applied to Appellant, does not directly interfere with her freedom in this respect, it clearly imposes a severe burden on her right of free choice in matters of fundamental allegiance. For either she has to give up her nationality, or she cannot be admitted to the Connecticut Bar. Non-admission to the bar forecloses to Appellant virtually all possibility of employment in her chosen profession. It has been established in a long series of cases that it is not only direct interferences with basic rights and freedoms which are intolerable, but that the attachment by the state, without a compelling interest on its side, of seriously adverse consequences to the free exercise of these rights and freedoms is equally unconstitu-

tional. *Sherbert v. Verner*, 374 U.S. 398 (1963); *Flemming v. Nestor*, 363 U.S. 603 (1960); *Speiser v. Randall*, 357 U.S. 513 (1958); *Shapiro v. Thompson*, 394 U.S. 618 (1969). Consequently, Rule 8(1) is inconsistent with international public policy and with the First Amendment of the United States Constitution, in that if applied to Appellant it would necessarily operate to coerce her into giving up her nationality and engaging in an act of allegiance in order to secure the benefit of the equally fundamental right to practice her profession.

In this case, this Court can conclude, as it did in *Baird v. State Bar of Arizona*, *supra*, that:

This record is wholly barren of one word, sentence or paragraph that tends to show this lady is not morally and professionally fit to serve honorably and well as a member of the legal profession. It was error not to process her application and not to admit her to the . . . bar. 401 U.S. at 8.

CONCLUSION

For the reasons set forth above, the judgment of the Connecticut Supreme Court should be reversed.

Respectfully submitted,

R. DAVID BROILES

HOOPER, KERRY, CHAPPELL & BROILES
200 Fort Worth Club Building
Fort Worth, Texas 76102

MELVIN L. WULF

JOEL M. GORA

American Civil Liberties Union
Foundation
156 Fifth Avenue
New York, New York 10010

*Attorneys for Appellant**

* Attorneys for the Appellant wish to acknowledge the assistance of Fré Le Poole Griffiths and Catherine Adamski in the preparation of this brief.

SEP 16 1972

IN THE

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM, 1972

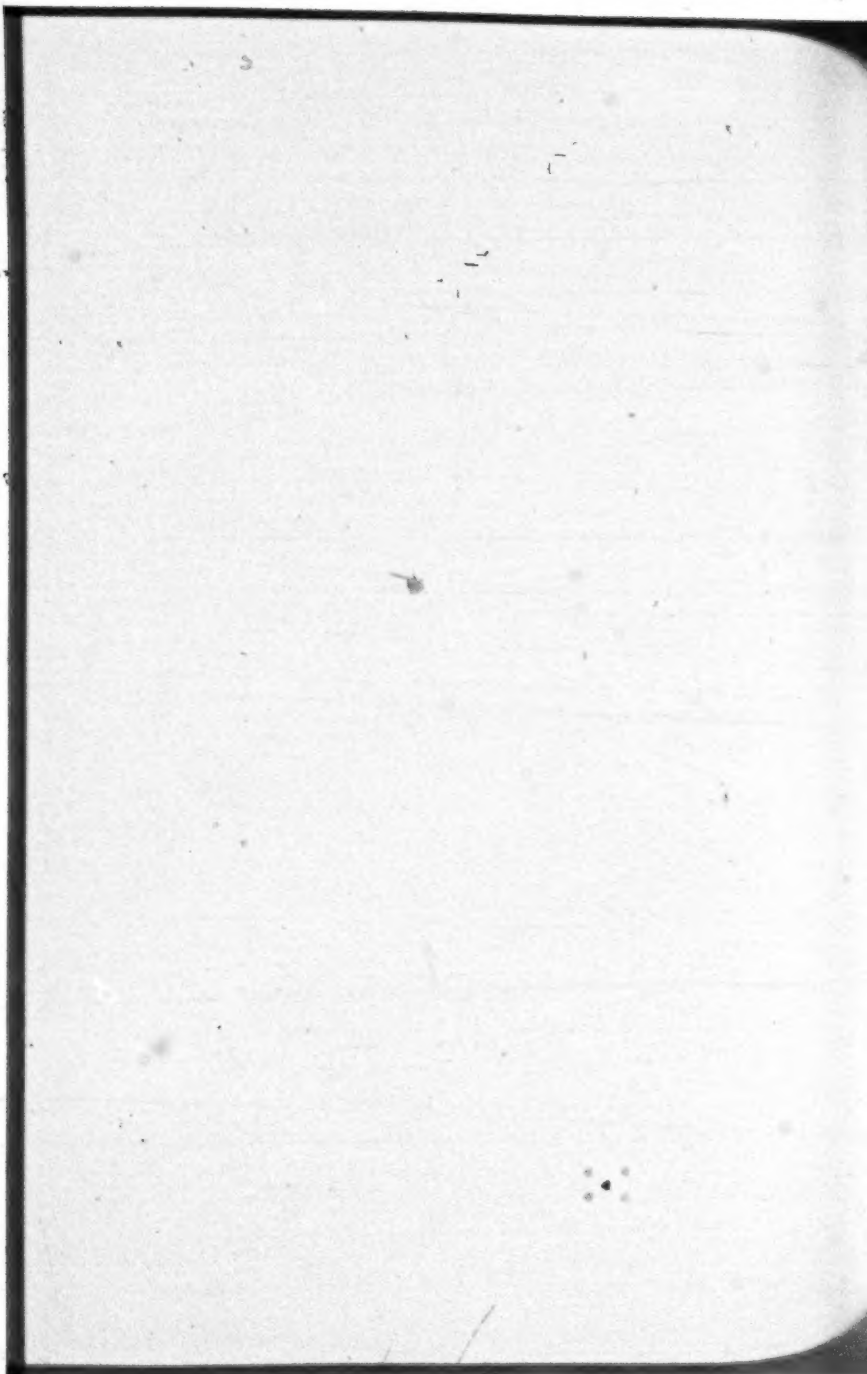
No. 71-1336

In re Application of FRE LE POOLE GRIFFITHS,
FOR ADMISSION TO THE BAR,
Appellant.

ON APPEAL FROM THE SUPREME COURT OF CONNECTICUT

APPELLEE'S BRIEF

GEORGE R. TIERNAN,
215 Church Street,
New Haven, Connecticut 06510,
Attorney for State Bar Examining
Committee of Connecticut,
Appellee



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1336

In re Application of FRE LE POOLE GRIFFITHS,
FOR ADMISSION TO THE BAR,
Appellant.

ON APPEAL FROM THE SUPREME COURT OF CONNECTICUT

APPELLEE'S BRIEF

Opinion Below

The opinion of the Supreme Court of Connecticut is reported in 162 Conn. 249, —A.2d— (1972). It is also included in the Appendix to the Jurisdictional Statement at 22-39.

Jurisdiction

The jurisdiction of the Supreme Court to review this decision by appeal is conferred by 28 U.S.C. §1257 (2).

Questions Presented

1. Does Connecticut Superior Court Rule 8(1), which requires that an applicant for admission to the bar be a citizen of the United States, discriminate unreasonably and unconstitutionally against aliens situated as is the Appellant, depriving her of equal protection of the laws?
2. Does Rule 8(1) contravene exclusive Federal power over immigration?
3. Does Rule 8(1) unconstitutionally burden the Appellant's right to determine her nationality thereby violating her rights under the First Amendment of the United States Constitution?

Statutes Involved

CONNECTICUT PRACTICE BOOK, "SECTION 8, QUALIFICATIONS FOR ADMISSION: To entitle an applicant to admission to the Bar, except under Sec. 12 of these rules, he must satisfy the committee:

FIRST, That he is a citizen of the United States."

(Sec. 12 applies to admission of attorneys of other jurisdictions who must be citizens.)

Statement of the Case

The Appellant is an applicant for admission to the bar of Connecticut. She is a resident and taxpayer of New Haven, Connecticut and has complied with all the conditions and requirements for admission to take the bar examinations except that she is not a citizen of the United States. Although

she could easily become a citizen of the United States by reason of her marriage to a United States citizen, she has elected to remain a citizen of the Netherlands and has not filed and does not intend to file a declaration of intent to become a citizen of this country. 8 U.S.C. §§1427(f), 1430(a). She filed with the clerk of the Superior Court an application for admission to the bar and the standing committee on recommendations for admission to the bar of New Haven County recommended to the bar of that county that her application be denied as she was not a citizen and thus failed to meet the requirements of the rules of the Superior Court for admission as an attorney. At a meeting of the bar of New Haven County, the report of the standing committee on recommendations for admission to the bar was presented and the members of the bar voted to accept the report of the committee denying her application. She thereupon petitioned the Superior Court for New Haven County for a decree that she be permitted to take the examination as a candidate for the bar and that she be declared eligible for such admission. Her petition was denied on the ground that she did not meet the necessary qualifications of being a citizen of the United States, which is the first requirement provided by §8 of the rules of the Superior Court governing admission to the Connecticut bar. Practice Book §8(1).

From this judgment the Appellant appealed to the Supreme Court of Connecticut. Her assignment of errors claimed that the court erred in not declaring §8(1) of the Practice Book to be unconstitutional; in not exercising its inherent power to waive the provisions of §8(1), in order to avoid injustice to the petitioner and in overruling the several claims of law which she made as follows: "a. Rule 8(1) of the Superior Court Rules discriminates unreasonably against aliens situated as is the

petitioner, depriving them thereby of their Constitutional Right to equal protection of the law; b. All forms of discrimination against aliens are presumed invalid unless the State shows an overwhelming or compelling interest in maintaining discrimination. c. Superior Court Rule 8(1) interferes with the Federal power over immigration. d. Superior Court Rule 8(1) as applied to the petitioner violates international public policy and the First Amendment of the United States Constitution by burdening petitioner's right freely to determine her nationality. e. Superior Court Rule 8(1) creates an unreasonable and arbitrary classification without rational relation to the petitioner's fitness or capacity to practice law. f. Superior Court Rule 8(1) violates equal protection in that it treads upon fundamental personal rights without satisfying the more stringent tests established for such regulations. g. Superior Court Rule 8(1) does not promote a compelling governmental interest. h. Superior Court Rule 8(1) imposes an impermissible burden upon interstate travel." (App. J. S. 22-24)."

The Supreme Court of Connecticut unanimously overruled the Appellant's assignment of errors and upheld the constitutionality of Rule 8(1). (App. J.S. 39)

SUMMARY OF ARGUMENT

I.

Connecticut Rule 8(1) is a reasonable requirement to protect the state's vital interest in the integrity of its judicial and governmental structure. As a bar admission rule it is intended to keep the machinery of the state under control of the citi-

*"App. J. S." — refers to the Appendix to the Jurisdictional Statement.

zens of the state and thus passes the test of reasonableness; in addition the interest protected is vital, and thus it passes the more stringent test as an alienage classification. No inquiry beyond reasonableness is really needed. The reason that an alienage classification thus receives special scrutiny, namely, the alien's non-participation in government, fails here because that non-participation is the purpose served by the classification. [To admit the test is to allow the classification.] A Connecticut attorney is an officer of the Court who acts by and with the authority of the State as a commissioner of the Superior Court; because of this power which he has been given, the State is legitimately concerned not only with the professional integrity and competence of the bar, an interest which has been held to be sufficiently strong to outweigh certain First Amendment claims; but also, with the integrity of participation in and exercise of actual government power. It is the almost universal practice in the United States to limit such participation in government to citizens, and this policy is sanctioned by State and Federal laws, and International Agreements both generally and with specific reference to the legal profession.

II.

Rule 8(1) does not conflict with any discernible Federal policy. When it acts in the area of aliens and naturalization, Congressional power is admittedly exclusive; but Congress has not entered the field of professional licensing and citizenship qualifications, and has in fact sanctioned such qualifications. The latest revision of the immigration laws is not inconsistent with these qualifications. The alleged effect upon aliens' distribution and travel is imaginary and, even if real, allowable in light of the interest served by the rule.

III.

The principle asserted of a right to choose nationality has doubtful legal significance in this country as international or constitutional law, since it is not part of any treaty, and in fact has been contradicted substantially by this Court. The 'right' cannot be found in the First Amendment unless a flag salute is the equivalent of the process of acquiring citizenship, and the powers of the United States as a sovereign nation are limited below those of other nations by some stricture not to be found in the Constitution.

ARGUMENT

I.

The Equal Protection Clause of the Fourteenth Amendment does not prevent Connecticut from conditioning admission to practice law upon the applicant's possession of United States citizenship.

Under the emerging equal protection principles the state retains the right to classify and Connecticut Superior Court Rule §8(1), which restricts the practice of law to citizens, is a reasonable regulation to protect the state's vital interest in the integrity of its judicial and governmental structure.

It is well established that a lawfully admitted alien as well as a citizen is a "person" for equal protection purposes. *Truax v. Raich*, 239 U.S. 33, 39 (1915); *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 420 (1948); *Graham v. Richardson*, 403 U.S. 365, 371 (1971). The Equal Protection Clause does not guarantee, however, that all persons be treated in the same manner; it only proscribes discrimination which lacks a

rational basis for difference in classification. *McGowan v. Maryland*, 366 U.S. 420 (1961); *Graham v. Richardson*, *supra*, at 371. This Court has never held that discrimination based on alienage, like discrimination based on race, is *per se* irrational. It is true that this Court has rejected foreign citizenship as a basis for state restrictions on ownership of property and employment in particular occupations characterized by this Court as "the common occupations of the community." *Truax v. Raich*, *supra*, at 41; *Oyama v. California*, 332 U.S. 633, (1948); *Sei Fujii v. California*, 38 Cal. 2d 718, 242 P.2d 617 (1952). However, a notable exception to the rule prohibiting the exclusion of aliens in particular occupations is the professions. See Article "Constitutionality of Restrictions on Aliens' Rights to Work," 57 Colum. L.R. 1012, 1026 (1957).

In Connecticut, as well as most of the states, lawyers must be citizens. This is accomplished by including it in the requirements for admission to practice by statute or court rule. In Connecticut the Superior Court, being the rule-making authority for bar admission, adopted the citizenship requirement as the first qualification for all applicants. Conn. Practice Book §8(1). This rule has been in effect since its adoption in 1879. See Conn. Practice Book 1879 §4(3) and 8. The requirement of citizenship is intended to ensure that one whose professional life is intimately involved in the structure and authority of the state will have a more formal and long term connection to it than is provided by geographical coincidence.

A. The proper constitutional test of Rule §8(1), as a classification, is its reasonable relation to an allowed purpose.

Confusion arises in this case because it involves two strands of thought, bar admission and alienage. It can be viewed as a bar admission case involving the problems of alienage or as Appellant insists, an alien discrimination case involving the legal profession. The Court below saw this as a bar admission case and phrased its opinion largely in the terms of "reasonable relationship" which had been held appropriate to such rules. In the process the Connecticut Supreme Court held that §8(1) also passed the more stringent standards of "strict judicial scrutiny" as an alienage classification. If it has passed "strict judicial scrutiny" *a fortiori* it is a reasonable rule.

1. The equal protection guarantee does not prohibit a state from classifying its residents if the distinction is based on a rational purpose.

The "reasonable relation" test was first applied in the *Takahashi* case. This test permits a classification only if the classes delimited by the legislature reflect actual difference which are related to the varying treatment given them and such treatment is in furtherance of a legislative purpose. It struck down a state statute which prohibited the issuance of commercial fishing licenses to persons "ineligible to citizenship." *Takahashi v. Fish and Game Commission*, *supra*.

This Court has always applied the "reasonableness" test to classifications challenged under the Equal Protection Clause of the Fourteenth Amendment and just last term unanimously reasserted its correctness. *Reed v. Reed*, 404 U.S. 71, 75-76 (1971). Moreover, it has never been denied that "reasonable-

ness" is the proper test of permissibility of a bar admission rule. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 239 (1957); *Cummings v. Missouri*, 4 Wall. 277, 319-320 (1866).

A State may require high standards of qualification but any qualification must have a rational connection with the applicants' fitness or capacity to practice law. *Schware v. Board of Bar Examiners*, *supra*, at 239.

In circumstances where it appears generally unlikely that a classification can be reasonable, this Court has said that the standard of "strict judicial scrutiny" will apply; but this does not mean the abandonment of the "reasonableness" test for something stronger.

2. The factors which warrant "strict judicial scrutiny" are not present in this case.

Alienage *per se* has never been termed an invidious or "particularly dubious classification." Brief for Appellant at 9-10. An examination of the cases cited therein will show that alienage will not be allowed as a permissible classification when it conceals an invidious discrimination, or when the purposes served are not sufficient to satisfy the requirements of equal protection. Alien land ownership laws were struck down on equal protection grounds because there is no presumption of validity to racially discriminatory alien classifications. *Sei Fujii v. California*, *supra*, at 730. It has not even been suggested that Rule 8(1), in intention or application, discriminates on the forbidden standard of race or nationality. Moreover, the Court below found no intent to put aliens at an economic disadvantage (App. J. S. 37). Appellant has not advanced any reason to controvert that finding except an obtuse suggestion that the Connecticut legislature might have enacted protec-

tionist laws for some other business activities. Brief for Appellant at 32. It is not clear what bearing this has upon the motivation of the judges who drafted Rule 8(1) a century ago.

The now famous footnote 4 to *United States v. Carolene Products Co.*, 304 U.S. 144, 152-153 (1938), apparently has been accepted as the explanation for the different standard of review. *Graham v. Richardson*, *supra* at 372. Justice Stone suggested that the presumption of constitutionality is weakened, and judicial scrutiny more acute, when a challenged law facially reveals an infringement of a constitutional provision, or when it restricts the operation of the political processes which would tend to bring about its own repeal, if thought undesirable by participants in that process. "Prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied on to protect minorities, and which may call for a correspondingly more searching judicial inquiry." 304 U.S. 144, 153, n. 4 (1938). The problem is not discreteness or insularity in the case of a positively phrased rule as applied to the well-educated wife of an American citizen. It can be seen that the justification for special scrutiny, namely, potential defects in the democratic structure, is precisely contradicted by the very reason for Rule 8(1), namely, to restrict participation in the machinery of government to citizens under that government. To admit that the purpose is valid, is to deny the need for the test of special scrutiny.

It appears that this purpose is valid although an elaborate demonstration would seem unnecessary for the principle is really self-evident. To deny its validity, is to require, constitutionally, that aliens have access to the franchise and to elective office; yet aliens are almost universally and by con-

stitutional provision, barred from participation in the government structure as voters and office holders.

Moreover, the purpose constitutes a sufficient "special public interest" to justify an otherwise suspect classification. On occasion this Court has upheld a "special public interest" doctrine to justify classifications based on alienage. See e.g. *Crane v. New York*, 239 U.S. 195 (1915). (the prohibition of employment of aliens on public works projects). This doctrine was primarily based on the idea that "whatever is a privilege rather than a right may be made dependent on citizenship." *People v. Crane*, 214 N.Y. 154, 164, 108 N.E. 427, 430 (1915). Although this Court unanimously rejected this concept in the distribution of welfare benefits it did not rule out its continuing vitality in other contexts. *Graham v. Richardson*, *supra* at 374.

The "special public interest" theory has fallen into disrepute because the reasons which have been advanced in support of it in the previous alienage classification cases have been artificial or archaic. These have been variants of "property interest" theories, relics of the era when property was seen as the ultimate political reality; or the feudal restrictions on alien land ownership, which, in their time served a vital interest in the preservation of the state. The nation no longer depends on knight-service, or scutage for its defense. These representations and structures no longer serve their purpose, namely, the preservation of the state as an entity, and an identity. This purpose, this "special public interest" is now served by laws which concern citizenship, and participation in the political process, and which are constitutional as applied to aliens if they are reasonably related to this purpose.

B. The state has a legitimate, and even "vital" interest in protecting the integrity of its governmental and judicial processes.

The Court below did not dwell on this proposition at great length, because it is self-evident in almost any theory of the structure of a democratic society. If the institution of government, and particularly the judiciary, do not function as they should, or if public confidence in their performance is imperfect, then the state in every literal sense is less viable than it could and should be. Government in this country has attempted to protect this interest, with reference to the two subjects here under consideration, attorneys and aliens. It will be seen that regulations in these areas have been sustained which would have been clearly unconstitutional but for this overriding interest.

1. To protect the integrity of the judicial process, states have closely regulated the practice of law.

While the state may not be "arbitrary" in denying admission to the bar, nonetheless it is clear that it may require high standards of an individual to practice law. The validity of close supervision of the legal profession has been repeatedly reaffirmed by this Court. *Ex parte Burr*, 9 Wheat. 529 (1824); *Cummings v. Missouri*, *supra*; *Ex parte Garland*, 4 Wall. 333 (1866); *Theard v. United States*, 354 U.S. 278, 281 (1957); *Schwartz v. Board of Bar Examiners*, *supra*. (Opinion of Frankfurter, J., concurring). This was not simply to protect the public from private loss due to unscrupulous or incompetent private counsellors. The more important objective has always been recognized as public faith

and confidence in the system of justice, because the legal profession is largely responsible for "the safekeeping of this country's legal and political institutions." *Konigsberg v. State Bar of California*, 366 U.S. 36, 52 (1961). Moreover, a state may choose to police its bar by admission procedures as well as by deterrence and punitive post-admission sanctions, *Law Students Civil Rights Research Council v. Wadmond*, 401 U.S. 154, 167 (1971).

The interest in the integrity and quality of the legal profession has survived strong constitutional challenges based on the fundamental personal rights of free speech and association. Lawyers may be required to support a professional organization, despite disagreement with its public position or policies, because of the greater benefit to the profession, and hence to society, which would accrue from a unified bar. *Lathrop v. Donohue*, 367 U.S. 820 (1961). A bar admission applicant's political views may be subject to a certain amount of scrutiny, despite a deterrent effect upon First Amendment rights, because a state may legitimately be concerned about the loyalty of "a limited class of persons in or aspiring to public positions by virtue of which they could, if evilly motivated, create serious danger to the public safety." *Konigsberg v. State Bar*, *supra* at 54. "Lawyers who are officers of the courts have been included in [that] rubric." *Law Students Civil Rights Council, Inc. v. Wadmond*, 299 F. Supp. 117, 125 (S.D.N.Y. 1969) *aff'd*, 401 U.S. 154 (1971). When the inquiry centers on freedom of association the indeterminateness of any generalization has led the court to require the same standards of proof as to knowledge of and interest to further illegal purposes which are required for criminal convictions. *Baird v. State Bar of Arizona*, 401 U.S. 1 (1971); *Re Stolar*, 401 U.S.

23 (1971). On the same day, however, the Court reaffirmed the legitimacy of a properly circumscribed examination of a bar applicant's political beliefs which was intended to insure that he could take the oath of admission in good faith. *Law Students Research Council, Inc. v. Wadmond*, *supra* at 163-164. No citation is required to show that any of these incursions into protected First Amendment freedoms would be disallowed in any other circumstances which did not so closely concern the integrity of the government itself.

Justice Miller's view of the attorney's place in our government was not challenged in 1866, and is unassailable now.

"That fidelity to the government under which he lives, a true and loyal attachment to it, and a sincere desire for its preservation, are among the most essential qualifications which should be required in a lawyer, seems to me too clear for argument . . . [F]or ages past, the members of the legal profession have been powerful for good or evil to the government. They are, by the nature of their duties, the moulders of public sentiment in questions of government, and are every day engaged in aiding in the construction and enforcement of the laws." *Ex parte Garland*, *supra*, at 385-386 (dissenting opinion).

At issue in that case was the determination of the proper governmental authority to regulate admission to the bar of this Court and constitutional restraints on legislative action; not the need for admission standards, or the vital role of the bar in our government.

2. To protect its citizenry and the integrity of its governmental processes, states and the Federal Government have restricted the political activities of aliens and barred them from positions which would present a possible conflict of loyalties.

"Citizenship is membership in a political society and implies a duty of allegiance on the part of the member and a duty of protection on the part of society." *Luria v. United States*, 231 U.S. 9, 22 (1913). This theory of government as a reciprocal trust between the state and the citizens who comprise it is at least as old as Plato's *Crito* and age has not diminished its vitality. Some of the reciprocal obligations apply to, and are demanded of, all residents. See *United States v. Wong Kim Ark*, 169 U.S. 649, 655 (1898). There are, however, important and instructive differences between the obligations and rights of the citizens and of the resident aliens, in relation to the state. All these differences stem from the inescapable political truth that "Citizenship in this nation is a part of a co-operative affair, the citizenry is the country and the country is its citizenry." *Afroyim v. Rusk*, 387 U.S. 253, 268 (1967).

Aliens are barred from participation in the actual operation of government and especially from making policy choices in government, because they do not have sufficient identification with the state. This is not a question of competence nor of "loyalty" as measured by oaths, but one of common sense. One who wishes to participate in decision-making ought to have a formal commitment to the results of the decision making process, and the fundamental decision making process to which aliens are denied access is voting. Generally, aliens cannot stand for election, and cannot vote anywhere in the United

States, and this has been true since 1926. *Harisiades v. Shaughnessy*, 342 U.S. 580, 586, n. 10 (1952). Before that time, some jurisdictions allowed aliens to vote, if they had declared their intention to become citizens. Konvitz, *The Allen and Asiatic in American Law*, 180 (1946). Voting and office-holding are almost definitional indications of citizenship, in the co-operative structure of government. See e.g. Constitution of Connecticut, Article 6 §§1 and 10; and Article 11, §1, which requires that all officials, including the clerks of the courts, be citizens, (despite Appellant's assertion to the contrary. Brief for Appellant at 20).

Aliens can be required to serve the government, but they cannot hold positions of command and responsibility within it. There are exceptions to this rule, as the Appellant has vigorously pointed out, but examination of them only proves the purpose of the rule. Aliens can be called to serve in the armed forces but they cannot hold positions of responsibility and command as commissioned officers in the regular forces. 10 U.S.C. §3285; 10 U.S.C. §5571. Aliens are barred from federal employment generally, 5 C.F.R. 338.101, (1972), except (1) where their foreign background might be a decided advantage, in positions such as translators, overseas positions with the State Department or Agriculture Department, (2) where technical skills might be needed, such as in the Smithsonian Institution, Atomic Energy Commission, or Department of Defense. Appellant cites two Civil Service Commission brochures for the proposition that aliens are not prohibited from the "highest levels" of governments, and this is in a sense true, as noted above. However, the majority of positions filled under the "excepted service" are not at high levels at all, but are seasonal or part-time jobs, or positions inherently unsuited

to competitive examination. Lack of United States citizenship is a proper disqualification for the "excepted service", 5 C.F.R. §302.203 (g) (1972). Part 305 of 5 C.F.R. covers the policy-sensitive "super-grade" civil service positions, in GS-16, 17 and 18, and §305.101 says explicitly that all normal requirements of that sub-chapter, which include citizenship, are in force except as noted therein; the requirement may be waived for a "limited executive assignment," conceived as a temporary or urgent type of position, by §305.509. An alien with a special, rare talent might qualify for a non-competitive appointment, §316.601. The narrow range of the exceptions demonstrate the generality of the rule: aliens are barred from government positions of command or policy-making authority. Moreover, the courts have respected this rule. The recent Federal court decisions cited in the Appellant's brief concerned clerk-typists, administrative assistants, hospital aides and other non-sensitive positions. One opinion takes pains to make clear that other positions in civil service and government might still rationally require citizenship. *Dougall v. Sugarman*, 339 F. Supp. 906, 911 (S.D.N.Y. 1971) (opinion of Lumbard, J. concurring). prob. juris. noted —U.S. — 40 U.S. Law Week 3588 (June 12, 1972). One is compelled to ask, is an attorney, practicing before the courts of the state, and possibly, as in Connecticut, possessed of powers to issue orders with the authority of the state government, more like a clerk-typist, or a government official?

This Court has never struck down restrictions upon the employment of aliens in positions which might be compromised by a conflict of loyalties. See *Pearl Assurance Co. Ltd. v. Harrington*, 38 F. Supp. 411 (D. Mass. 1941) (opinion of Frankfurter, J.), *aff'd per curiam* 313 U.S. 549 (1941), which

upheld the right of the state to bar aliens from certain positions in the insurance business as local managing representatives of foreign insurance companies. It would seem that the connection between the legal counsellor and the laws of his jurisdiction ought to be at least as close as that between the insurance representative and his customer's interest.

C. The role of an attorney at law in Connecticut justifies the citizenship requirement for admission because of the connection between the legal profession and the government.

The Court below, in its opinion, outlines the historical and legal development of the rules for admission of attorneys to practice law in Connecticut. (App. J. S. 24-25). The Superior Court, a constitutional court, promulgated the rules for admission, Conn. Constit. Art. 5, §1. Although the requirement at issue in this case is a rule of Court and not a statute it has the force of a statute. *Application of Dodd*, 132 Conn. 237, 241, 43 A.2d 224 (1945). There is no longer any doubt as to the power of this constitutionally established tribunal to fix, by rule, the qualifications necessary for the practice and the procedure to be followed for admission to practice law in Connecticut. *Application of Dinan*, 157 Conn. 67, 71, 244 A.2d 603 (1968); *Heiberger v. Clark*, 148 Conn. 177, 185, 169 A.2d 652 (1961).

1. An attorney is an "officer of the court" in a sense that is meaningful in this context and in Connecticut he is formally designated as such by his office of commissioner of the Superior Court.

A careful analysis of the concept of "officer of the court" and of the court's treatment of it, only reinforces its significance in support of Rule 8(1). This Court has long termed the attorney an "officer of the court." *Ex parte Garland, supra*, at 378; *Powell v. Alabama*, 287 U.S. 45, 73 (1932); *Theard v. United States, supra*, at 281 quoting Justice Cardozo to the effect that an attorney is "an instrument or agency to advance the ends of justice." In every circumstance when the concept has been distinguished, it has been in the interest of freeing the legal profession from political, personal or peremptory interference. *Ex parte Robinson*, 19 Wall. 505; *Ex parte Bradley*, 7 Wall. 364. The case of *Cammer v. United States*, 350 U.S. 399, 405, (1956), the occasion for Justice Black's note that confusion surrounds the phrase "officer of the court", is a perfect example of this motive for distinguishing it. This Court there disallowed a contempt sanction against an attorney for "misbehavior of a court officer in an official transaction." The "misbehavior" involved mailing questionnaires to grand jury members who were federal employees in an attempt to determine if they were influenced by bias or fear of reprisals when they indicted the attorney's client for filing a false non-communist affidavit. Thus, a lawyer is not an "officer of the court" on the organization chart of the state judiciary system, but his influence as "an instrument or agency to advance the ends of justice," whether or not he possesses the actual authority of a literal "officer of the court" as to issue process (as he does in Connecticut) is very substantial. Attorneys "are, by the

nature of their duties, the moulders of the public sentiment on questions of government, and are every day engaged in aiding in the construction and enforcement of the laws." *Ex Parte Garland, supra*, at 386. (Miller, J., dissenting opinion). It bears repeating that participation in the fundamental decision making structures of the polity is almost universally limited, in this country, to citizens.

In Connecticut, the term "officer of the court" has a very concrete meaning, for by statute every attorney admitted to practice is also a commissioner of the Superior Court, and may "sign writs, issue subpoenas, take recognizances, and administer oaths." Conn. Gen. Stat. §51-85. The Court below elaborated on this office and its powers at length in its opinion, but it should be re-emphasized that these powers are not merely ministerial functions, and the earliest case which discussed them at length said categorically that they were to be exercised only by "an officer of the state," *Doolittle v. Clark*, 47 Conn. 316 (1879).

Because of the functions and powers as members of the bar and commissioners of the Superior Court as a final step before actual admission an applicant must take the traditional oath of an attorney (App. J.S. 44). He must also take an oath to support the Constitutions of the United States and of the State of Connecticut "as long as you continue a citizen thereof," which oath is required of "[m]embers of the general assembly, and all officers, executive and judicial, before they enter on the duties of their respective offices." Conn. Const. Art. 11 §1, See, Conn. Gen. Stat. §1-25. Contrary to the contention of the Appellant, these powers are not automatic formalities, and abuses, some with serious effects, have occurred. Several times attorneys, or Justices of the Peace, with analogous

powers, have been forbidden to use them in cases in which they were an interested party. *Doolittle v. Clark, supra*; *Yudkin v. Yates*, 60 Conn. 426 (1891). In *Sharkiewicz v. Smith*, 142 Conn. 410, 114 A.2d 691 (1955) the Court held that an attorney had properly and professionally, refused to sign writs for a layman attempting to institute a frivolous lawsuit. Mandamus would not lie to order him to sign a writ. *Application of Sharkiewicz*, 143 Conn. 724, 126 A.2d 822 (1956). To be sure, the particular cases of abuse which have arisen have involved conflicts of professional, not national allegiance. This can hardly be taken to show that none could possibly arise, because, after all, during this same period there have been no alien attorneys in the state, or, for that matter, in most of the nation.

2. The reasonableness of Rule 8(1) is evidenced by its acceptance in international agreements, treaties, Congressional action and in the court rules or statutes of nearly every state in the country.

The principle embodied in Rule 8(1) is embraced and endorsed almost universally in this country. Though this widespread concurrence is not conclusive proof of its correctness, it is certainly persuasive evidence of its reasonableness.

Up to 1972 the relevant court decisions upheld the validity of citizenship as a bar admission qualification. In 1972 the Supreme Court of California struck down a statutory requirement of citizenship as violative of the Equal Protection Clause reversing a previous decision of that court. *Raffaelli v. Committee of Bar Examiners*—Cal. 3rd —496 P.2d 1264 (1972). The Court admitted that its decision was distinguishable from

the decision of the Connecticut Supreme Court. (App. S. B. 22)* *Application of Park*, 484 P.2d. 690, 696 (Alaska 1971) also relied on by the Appellant is distinguishable. In that case the Court struck down a statutory requirement of citizenship as an encroachment on the inherent judicial power to determine standards of admission to the bar. The court rejected any inference that "there may not be imposed prerequisites for admission to the bar which bear on the qualifications of an applicant as they relate to citizenship." It also said that demonstrated intent to become a citizen, was a necessary prerequisite before an alien could, in good faith, take an oath of allegiance to the Constitution. Appellant contends that, because there are a few jurisdictions which allow aliens to practice, therefore to do so is rational, therefore to prevent them from practicing can advance no "compelling state interest." The rest of the nation is not bound by the findings of rationality of the Courts of California, and two or three other states. Twenty-seven states, by statute, limit the practice of law to citizens or aliens who have filed their intention to become citizens; in the latter cases, membership in the bar is usually revoked if citizenship is not acquired. Nineteen other states have court rules to the same effect. See *Aliens in Professions and Occupations*, 16 *Immigration and Naturalization Reporter* 37 (1968); *Alien Lawyers in the United States and Japan — A Comparative Study*, 39 *Wash. L. Rev.* 412, 415 (1964) (The authors of this latter article demonstrate that Japan also effectively bars aliens from the practice of law).

Bi-lateral treaties now in force reveal the policy of the Federal Government not to nullify existing state requirements for admission to the professions. This country signed a

*"App. S. B." — refers to Appellant's Supplemental Brief.

treaty of Friendship, Commerce and Navigation with the Netherlands on March 27, 1956. Article VII ¶1, of said treaty accords national treatment to nationals and companies of either party "with respect to engaging in all types of commercial, industrial, financial and other activity for gain (business activities) within the territories of the other party . . ." Not only does Article VII of said treaty omit professional activities, but Paragraph 8 of the protocol to the treaty states: "The activities referred to in Article VII, Paragraph 1, do not include the practice of the professions." (March 27, 1956), 8 U.S.T. 2043, T.I.A.S. 3942.

In addition to the evidence of national policy expressed in the foregoing treaty the hearings before the subcommittee of the Committee on Foreign Relations of the United States Senate on July 13, 1953 and excerpts from the report of July 17, 1953 from the Committee on Foreign Relations disclose a definite policy not to nullify any state requirement of citizenship to practice a profession. The report reads, in part: "It [the Committee on Foreign Relations] felt that if a State by its own constitutional processes requires that an individual seeking to practice a particular profession should be a citizen of the United States, such laws should not be nullified by the national-treatment provisions of the pending conventions." The reservation proposed and adopted by the Senate with respect to the then pending treaties was that the provisions on the practice of the professions "shall not extend to professions which, because they involved the performance of functions in a public capacity or in the interest of public health and safety, are state-licensed and reserved by statute or constitution exclusively to citizens of the country, and no most-favored nation clause in the said treaty shall apply to

such professions." As noted on the top of Page 10 of the report, the practice of law was "a profession which a court might find is of a public character." S. Rep. Exec. Rep. No. 5, 83d Cong. 1st Sess. p. 10 (1953)

A treaty to the extent that it is self-executing — that is requires no legislation to make it operative — has the force and effect of a legislative enactment and is equivalent to an act of Congress, as the supreme law of the land. 52 Am. Jur. §17, U.S. Const. Art. VI §2. Congress may enact an inconsistent rule which will control the action of the courts. *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

The Immigration and Naturalization Act of 1965 did not, directly or by implication, supersede the existing treaty between this country and the Netherlands, or any other existing treaty which included a reservation excluding professions from the equal treatment provisions in said treaty. The cases cited by Appellant in support of her position on the appeal, namely *Purdy & Fitzpatrick v. California*, 71 Cal.2d 556, 456 P.2d 645 (1969), (public works employment) and *Raffaelli v. Committee of Bar Examiners, supra* (admission to the bar) agree on reasons to void citizenship as a permissible requirement qualification except one, namely, infringement on federal power over immigration. The Court in *Raffaelli* did not discuss this point. Paolo Raffaelli was a citizen of Italy (App. S. B. 4). The treaty with Italy then in effect specifically excepted the practice of law from the provisions of national treatment. See, Treaty of Friendship, Commerce and Navigation with Italy, (February 2, 1948) 63 Stat. 2255, T.I.A.S. 1965 (Art VII, §1). This may explain the omission.

At one time in this country, some aliens were admitted to the bar, and some women were refused. *Bradwell v. State*, 16 Wall. 130 (1872); *Re Lockwood*, 154 U.S. 116 (1894). At that time, the United States was very much a non-native country, and the notion of national citizenship had just been defined in the Fourteenth Amendment. Up to that time the Constitution contained no definition of citizenship. In 1870, more than $\frac{1}{2}$ of the population of this country was foreign-born; by 1890, about $\frac{1}{4}$ of the adult males were foreign born, and of these, only $\frac{1}{2}$ were naturalized, even under the standards which prevailed then.* Of course it could be reasonable to admit aliens to the bar when alienage did not mean very much legally, and when a great and growing part of the population were not citizens. It was just as reasonable to exclude women, apparently. At the time this Court was saying yes to aliens, no to women, the Connecticut court adopted opposite rules. Conn. Practice Book, 1879, §4(3), (8); See, *In re Hall*, 50 Conn. 131, 47 Am. Rep. 625 (1882). The Connecticut Supreme Court, after careful re-examination of the problem, still finds that "the requirement of citizenship is not simply reasonable, but is basic to the maintenance of a viable system of dispensing justice under our form of government" (App. J. S. 34).

3. A state may require of an alien a more convincing demonstration of allegiance than a simple oath.

To require citizenship of a lawyer is not to presume that all aliens are positively disloyal and the court below did not suggest this. Appellant insists she is ready and willing to take the appropriate oaths, while at the same time she points out that, if an oath might not be appropriate as a demonstration of

*U. S. Bureau of Census, Historical Statistics of the United States, Colonial Times to 1957 (1960).

fealty, an alternative may be used. She of course would like to show that a judge could by himself waive the citizenship requirement, but the statute which she has misread gives no room for such an interpretation, as it only permits an affirmation "on pain of perjury" to be substituted for an oath "so help me God." Brief for Appellant p. 22 n. 11; Conn. Gen. Stat. §1-23.

Oath requirements have been greatly restricted in recent years out of deference to an individual's political rights and beliefs. *Law Students Research Council, Inc. v. Wadmond*, *supra*. It is now admitted that an oath can be "no more than an amenity." *Cole v. Richardson*, 405 U.S. 676, 685 (1972). Perhaps in line with this trend, further investigation of a bar applicant's statements has been allowed in order to test whether such applicant can take an oath in good faith, *Konigsberg v. State Bar of California*, *supra*, at 42; *Law Students Research Council, Inc. v. Wadmond*, *supra* at 163-164; *cf. Orloff v. Willoughby*, 345 U.S. 83, 91 (1953). The state may reasonably require the further identification with the governmental system which is evidenced by citizenship when granting one the license to participate in the functioning of that system as an attorney. This is not to imply that aliens are "presumptively disloyal," but to require a more secure demonstration of such loyalty than is contained in a form of words, which is required of every bar applicant. The naturalization requirements include proof, not merely asseveration, of attachment to the principles of the Constitution; and this seems an eminently reasonable criterion for qualification as an attorney as well, *cf. Law Students Research Council, Inc. v. Wadmond*, *supra*, at 166. This generalized, but fundamental "political" test is particularly relevant in the present context, wherein Appellant

insists, for reasons unknown, that she has no intention of becoming an American citizen.

The Court concluded that after applying the various tests directed in decisions, §8(1) was not constitutionally invalid as to the Appellant as a denial to her of the equal protection of the laws. "Attorneys are the means through which the majority of the people seek redress for their grievances, enforcement and defense of their rights and compensation for their injuries and losses. The Courts not only demand their loyalty, confidence and respect, but also require them to function in a manner which will foster public confidence in the profession and, consequently, the judicial system. In this light the requirement of citizenship is not simply reasonable but is basic to the maintenance of a viable system of dispensing justice under our form of government." (App. J. S. 34).

II

Rule 8(1) does not conflict with federal policy and authority concerning aliens.

The Appellant has presented a rather ingenious argument to show a conflict between professional licensing laws and federal immigration policy.

A. Citizenship qualifications for professional certification are not part of any federal regulatory scheme, on the contrary, the Federal Government has included them within the reserved powers of the State.

There are areas subject to exclusive federal control, but there are not many, and the reasons are clear in the federal

structure of the country. Federal legislation is usually "interstitial" and rarely occupies a field entirely. When it does so, it is for some reason peculiarly appropriate to national attention, such as foreign affairs, "uniformity" and freedom of interstate commerce.

When the Federal Government acts in the field of alienage and citizenship, there is a strong presumption that it has decreed an exclusive system of regulations; but over the particular topic — not necessarily the entire subject of aliens. *Hines v. Davidowitz*, 312 U.S. 52 (1941) (pre-empting the practice and requirement of alien registration by states). The Congressional power to prescribe a uniform rule of naturalization was not exercised vigorously for more than a century. When this Court reaffirmed the United States' sovereign right to preemptorily refuse an alien entry to this country, it did not suggest that such national power was so pervasive that no state law could overlap the subject of alienage. *Kleindienst v. Mandel*, — U.S. — 40 U.S. Law Week 5103 (U.S. June 29, 1972). The reasons for Federal supervision of policies regarding aliens are uniformity, *Graham v. Richardson*, *supra*, and foreign policy, *Zschernig v. Miller*, 389 U.S. 429 (1968). Uniformity is nearly complete, in that all but a few states require attorneys to be citizens, and it has not been suggested that any international embarrassment results from the requirement. This Court has recognized the allowability of professional licensing restrictions, if not in conflict with a treaty. *Hines v. Davidowitz*, *supra*, at 69, n. 22. We have already referred to the national policy in connection with various treaties which specifically recognize this restriction, and similar restrictions are common in other countries.

These restrictions do not contradict Congress' intent in the Immigration and Nationality Act of 1965, which can be made entirely consistent with these treaties. The major purpose of the 1965 Act reflected in the bill itself, and in the reports and debate was to eliminate the national origin quota as a basis for admitting immigrants. It is a scheme of regulation of alien employment only insofar as it attempts to control admission roughly by need for persons with particular skills, and the emphasis in the debate and the administration of the law has been over 8 U.S.C. §1153(a)(4), the 'fourth preference.' The debate which was exhaustive, was dominated by the quota issue, the protection of jobs in the fourth preference, and the welcome prospect of an influx of scientists, engineers, physicians, and teachers under the third preference. See e.g. 111 Cong. Rec. Part 18, at 24457 (September 20, 1965). There is no reference to non-technical professionals such as lawyers under the third preference, and no inference that alien lawyers would be admitted to practice except by normal procedure. At the present time, lawyers and all non-medical professionals, no matter what their educational background, must justify their admission under the third preference on a case-by-case basis, 29 C.F.R. §§60.3, 60.7 (Schedule A) (1972). The obvious understanding and intent of Congress was that the country would inevitably benefit from the presence of a larger number of cultured and educated persons possessed of talent and initiative, even if not immediately employable in their particular occupational specialty. Especially for professionals, there was no "right" or even expectation of employment in a particular area, even in the profession by which the alien obtained permanent residence. See *Butterfield v. Attorney General*, 442 F.2d 874, 878 (1971), citing testimony by Secretary of Labor

Wirtz, Hearings on H.R. 2580 before Subcommittee No. 1 of the House Judiciary Committee, 89th Cong. 1st Sess. (1965) at p. 126 referring constantly to scientists and teachers. Of the handful of lawyers who immigrated to the United States in fiscal 1971, only one-fifth were admitted under the third preference. The rest were in other categories. The third preference was not even a new policy, but simply a clarification and recodification after the quotas were abolished. The old immigration law similarly attempted to encourage professional immigration, yet it existed side-by-side with the bilateral treaties which recognized the special status of the professions and excluded them from national treatment provisions. This is indicative of a national policy not to interfere with state citizenship requirements for professional certification. Any burden which Rule 8(1) places upon general congressional power to admit aliens, is a burden long acknowledged and allowed by Congress itself; and the rule is not an obstacle to the accomplishment of the full purposes of Congress, for those purposes nowhere envisioned abolition of state laws requiring citizenship for professional certification. Except for the one reference in the table of definitions (8 U.S.C. §1101 (32)) Congress does not seem to have been concerned about the problem of alien lawyers at all.

B. The effect of Rule 8(1) upon broad Federal policies is minimal.

Congress might understandably have been unaware of this problem of alien lawyers. In this age of class litigation, it is doubtful that a class would be found of persons in Appellant's position. In view of the existing laws, no doubt aliens who have chosen to become lawyers have chosen to become citi-

zens. In addition, there are relatively few lawyers immigrating to the United States. Figures from the Annual Report of Immigration and Naturalization Service 1971, show that only 384 lawyers or judges became permanent resident aliens that year in all preference categories, 76 of these being beneficiaries of the "third preference." This represented less than 1% of the professional and technical workers admitted. An additional 141 lawyers and judges were admitted for temporary stays under 8 U.S.C. §1101 (a)(15)(H) and (J); 108 of these were exchange visitors or trainees. By contrast, there were 4.2 million aliens in the country in January, 1971, 3.7 million of these permanent residents, and 370,000 immigrants admitted during that year.

It is federal policy to encourage the interstate travel of aliens, but there is no federal program regulating such travel. It is very difficult to see how the requirement of Rule 8(1) can operate as a restriction on interstate travel, since nearly every state has the same requirement. There is no evidence that alien lawyers are flocking to the states which remain the exception, and given the size of the alien lawyer population, they could hardly have a meaningful influence upon the distribution of the alien population through the country even if they did. A policy to encourage free interstate commerce does not mandate absolute uniformity of state commercial laws according to a federal standard; similarly, a policy to encourage free interstate travel of persons does not mean that all professional and occupational qualifications must be dictated to the states by the Federal government. This is especially true for the more sensitive professions, including law. A rule requiring citizenship of a lawyer is simply not comparable, legally or practically, to a law which attempts to ex-

clude unwanted aliens by denying them welfare benefits, or by subjecting them to a restrictive quota in all employment, or by preventing them from working in one of the common occupations of the community.

The Connecticut Supreme Court understood the scope of federal regulation perfectly well. In *Graham v. Richardson*, *supra*, after all, it was stipulated that the offensive statute was designed to hamper the travel of aliens — it was not at all a case of incidental effect. Not only is Rule 8(1) not so intended, it would not even have that effect, on a meaningful scale. In addition, the court found that Rule 8(1) served a legitimate and independent need. In short, Rule 8(1) has no discernible impact on the goals behind our federal immigration laws. It is only "statutes, rules, or regulations which unreasonably burden or restrict this [interstate] movement" which must fail. *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969).

III

The asserted principles of international political philosophy have no legal status in the United States Constitution.

Appellant is searching for constitutional text with which her political philosophy can be interwoven, and has sought support in the First Amendment. The only case cited to support her position is *West Virginia Board of Education v. Barnett*, 319 U.S. 624 (1943).

Attitudes toward nationality may indeed be changing, and some day perhaps citizenship will be simply an administrative

convenience like a driver's license. This result may even be laudable. But, the nationality laws of the United States have not changed, and when they do change, Congress will be the means of achieving it. Decisions based on policy alone are not for this Court to make. This Court has shown no inclination to question the basis and thrust of our laws concerning citizenship and aliens. *Kleindienst v. Mandel*, *supra*; *Rogers v. Bellei*, 39 U.S. Law Week 4354 (April 5, 1971). None of the international agreements cited in appellant's argument has the force of a treaty; they are effectively precatory. Even the United Nations Charter, which is a treaty, is not the supreme law of this country when it is not self-executing. *Hitai v. Immigration and Naturalization Service*, 343 F.2d 466 (2d Cir. 1965). The law of this country does indeed recognize an individual's right to expatriate himself, 8 U.S.C. §1481; but there is no right to change nationality if by this is meant a right to become a United States citizen except by naturalization, or even to reside in this country as a non-citizen under one's own terms. The government's authority here is still absolute, see, *Kleindienst v. Mandel*, *supra*. Even the principles of free choice of nationality for women are not United States law, except as Congress has made them so. 8 U.S.C. §1489; *Savorgnan v. United States*, 171 F.2d 155 (7th Cir. 1948) *aff'd*. 338 U.S. 491 (1950).

There is no absolute right in the First Amendment to choose one's form of loyalty oath. More accurately, a person cannot be forced to make a ritual show of allegiance where to do so would be contrary to his deeply held, and constitutionally protected, religious beliefs. *West Virginia Board of Education v. Barnett*, 319, U.S. 624 (1943). The analogy in Appellant's argument between a school child's morning stiff-arm salute to

the flag, and standards of admission to the legal profession, is questionable. Appellant is trying to fit her theory of a desirable political society into some "penumbra" of the First Amendment.

Appellant lists some cases to show that states may not interfere with what she calls 'basic rights and freedoms' without some counterbalancing compelling state interest. The right interfered with in *Sherbert v. Verner*, 374 U.S. 398 (1963) was the free exercise of religion, recognized explicitly in the First Amendment; the Court could not even find a Constitutionally protected right in *Fleming v. Nestor*, 363 U.S. 603 (1960); *Speiser v. Randall*, 357 U.S. 513 (1958) involved an unfair burden-of-proof arrangement which interfered with the explicitly protected freedom of speech; and *Shapiro v. Thompson*, *supra*, protected the long-recognized right of free interstate travel against interference motivated by local xenophobia and rationalized by administrative afterthoughts. The 'basic rights' she asserts, which amount to insistence that she be admitted to a profession in part on her own terms, have long been subject to a considerable amount of legitimate interference under United States constitutional law. *Speiser v. Randall*, *supra* at 527 notes explicitly that the legal profession may be subject to some interferences which would be unconstitutional if aimed at someone claiming a tax-exemption.

Any interference with what may be 'wise principles of international law' is insubstantial when compared with the long-recognized interest of the state in protecting the integrity of its institutions. In answer to the claim of the Appellant the Court below concluded:

"The rule is a classic example of a state regulation designed not to restrict a right but to protect rights. It is

not designed to lead the petitioner into a circumstance where she will be forced to choose between conflicting allegiances but rather to assure that the force of her continued allegiance to a foreign power will not be brought to bear in areas affected with significant public interest in a state where she chooses to remain an alien. By withholding her allegiance from the United States she 'leaves outstanding a foreign call on . . . [her] loyalties which international law not only permits our government to recognize but commands it to respect.' *Harisiades v. Shaughnessy*, 342 U.S. 580, 585, 72 S. Ct. 512, 96 L. Ed. 586.

We do not find §8(1) of the Practice Book to be unconstitutional. Nor do we find it unreasonable that as a condition to the petitioner's admission to the bar of this state and the exercise of the rights and authority of an attorney admitted to practice in its courts that the petitioner take the necessary steps leading to citizenship, including the oath of citizenship prescribed by 8 U.S.C. §1448 to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen and to bear true faith and allegiance to the United States . . ." (App. J. S. 38-39).

CONCLUSION

For the reasons set forth the judgment appealed from should be affirmed.

GEORGE R. TIERNAN,
Attorney for the Bar Examining
Committee of Connecticut,
Appellee.

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"The rule is a classic example of a state regulation designed not to restrict a right but to protect rights. It is

not designed to lead the petitioner into a circumstance where she will be forced to choose between conflicting allegiances but rather to assure that the force of her continued allegiance to a foreign power will not be brought to bear in areas affected with significant public interest in a state where she chooses to remain an alien. By withholding her allegiance from the United States she 'leaves outstanding a foreign call on . . . [her] loyalties which international law not only permits our government to recognize but commands it to respect.' *Harisiades v. Shaughnessy*, 342 U.S. 580, 585, 72 S. Ct. 512, 96 L. Ed. 586.

We do not find §8(1) of the Practice Book to be unconstitutional. Nor do we find it unreasonable that as a condition to the petitioner's admission to the bar of this state and the exercise of the rights and authority of an attorney admitted to practice in its courts that the petitioner take the necessary steps leading to citizenship, including the oath of citizenship prescribed by 8 U.S.C. §1448 to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen and to bear true faith and allegiance to the United States . . ." (App. J. S. 38-39).

CONCLUSION

For the reasons set forth the judgment appealed from should be affirmed.

GEORGE R. TIERNAN,
Attorney for the Bar Examining
Committee of Connecticut,
Appellee.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1972

No. 71-1336

In re Application of FRE LE POOLE GRIFFITHS,
For Administration To The Bar, *Appellant.*

ON APPEAL FROM THE SUPREME COURT OF CONNECTICUT

**BRIEF OF NEW YORK ATTORNEY GENERAL,
AMICUS CURIAE, IN SUPPORT OF AFFIRMANCE**

The New York Attorney General submits this brief in support of affirmance of the judgment of the Connecticut Supreme Court. We note that the appellant's counsel have, in a letter dated September 21, 1972, consented to its filing on or before October 6, 1972.

New York's Interest in this Appeal

New York is interested in the disposition of this appeal by reason of the fact that New York, like Connecticut, has a requirement that an applicant for admission to its State Bar, be a "citizen" (New York Judiciary Law §§ 460; 467; CPLR § 9406; and N.Y. Court of Appeals Rule §§ 521.1 and 527.1), a requirement that is currently being challenged in a suit now pending before a three-judge Court in the Southern District of New York (*Van Ginkel et al. v. Stevens*, 72 Civ. 1331).

The New York statutory provisions are set forth in an appendix at the end of this brief.

Principle Constitutional Provisions Involved

ARTICLE IV, § 3 of the Constitution of the United States provides:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Section 1 of the Fourteenth Amendment provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

New York Position

We support the position of the Supreme Court of the State of Connecticut that it is *constitutional* to require persons who desire to be licensed to practice law in a State to be citizens of the State and of the United States.

We note that the chief basis upon which the plaintiff attacks the Connecticut requirement is that it violates the Equal Protection Clause (App. Br., pp. 2, 6-7, 9-26). We recognize that certain classifications based upon alienage are "subject to close judicial scrutiny". *Graham v. Richardson*, 403 U.S. 365 (1971).^{*} But we submit that

^{*} As the appellee (Brief, pp. 6-12) so forcefully demonstrates, this need for close judicial scrutiny arises only when legislation is directed *against* aliens to deprive them invidiously of generally-accepted rights (e.g. employment in the common occupations and welfare benefits in lieu thereof) on the basis of race or a special national status. Otherwise the test should be one of reasonableness. *Graham (supra)*, at p. 371.

even in the face of such "scrutiny", there remain certain "privileges and immunities" which are inherent in citizenship and which the States are entitled to restrict to their citizens. If not, under the mantle of "equal protection", the distinction set forth in the Fourteenth Amendment itself between "citizens" and other "persons" tends to become completely obliterated. And if we were to grant to the non-citizen virtually all the constitutional privileges of the citizens, even the inducement to naturalization would be diminished.

A government must have a broad discretion to establish a preference for its own citizens who will, as lawyers, be entrusted with significant functions in the operation of one of the three principle branches of its government (the judiciary), as well as important services in its executive branch (e.g., numerous offices as prosecuting attorneys, in the enforcement of law), in addition to myriad confidential and fiduciary functions that attorneys may be required to perform on behalf of individual clients. Restated, our position is that, under the specific terms of the Fourteenth Amendment, while each State is required to grant equal protection to all "persons" subject to its jurisdiction, it *may* reserve to its own citizens the right to practice *its* law in *its* Courts and to serve in other capacities as an attorney within *its* jurisdiction.

To paraphrase the opinion of Chief Justice BURGER in *Perry v. Sinderman*, — U.S. —, 33 L.Ed. 2d 570, 581 and *Board of Regents v. Roth*, — U.S. at pp. , 33 L.Ed. 2d 548, 561 (June 29, 1972), the relationship between a state government (or one of its three main branches, the judiciary) and its attorneys is "essentially a matter of state concern and state law". In *this* matter of *state* concern, the right to practice law, a State should be entitled to restrict its constitutional privileges to "citizens". This privilege of citizenship is a concomitant of the similar broad discretion which a public employer has to

establish qualifications for its employees related to the efficiency and integrity of the operations of government. See *United Public Workers v. Mitchell*, 330 U.S. 75, 101 (1947); and *Keim v. United States*, 177 U.S. 290, 293 (1900). See also the New York Attorney General's brief in *Sugarman v. Dougall* (71-1222; October, 1971 Term).

In *Dunn v. Blumstein*, 405 U.S. 330 (1972), Mr. Justice MARSHALL recognized that to "decide whether a law violates the Equal Protection Clause" the Court looked, in essence to three things (p. 335):

"the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification".

In *Dunn*, the Court was considering the validity of restrictions upon the constitutional right of "citizens" to vote (405 U.S., at p. 336). In *Shapiro v. Thompson*, 394 U.S. 618 (1969) the restrictions involved were placed upon the fundamental right of "persons" to interstate travel. Clearly, *citizens* have certain rights, like the right to vote, which other *persons* do not possess. It is settled, therefore, that this Court must consider the status of the person asserting a right in order to determine the protection to which he or she is entitled.

In *Sugarman v. Dougall* (*supra*, Oct. Term, 1971 No. 71-1222), we have argued (Attorney General's Brief, p. 19), in a case testing the validity of a citizenship qualification for public employment, that the "compelling state interest" test is applicable only to legislation which affects a specific constitutional or fundamental right.* Neces-

* This test was utilized by Chief Justice WARREN in *Kramer v. School District*, 395 U.S. 621 (1969) despite the fact that the voting restrictions there challenged had been litigated solely upon a basis of their reasonableness. Although the case was remanded to

sarily, therefore, we seek to focus our attention on the nature of the right which is being asserted by the person who challenges our statutory classification. And we urge that no State be burdened with the task (particularly upon the basis of ancient legislative records which may not reflect completely the purpose of long-established, long-undisturbed and only recently-challenged laws) of showing a "compelling state interest" for legislation which does not even restrict a *constitutional* right.

The appellee (Br. pp. 15-18) has succinctly demonstrated that the federal government as well as the States has restricted the activities of aliens and barred them from positions which would present a possible conflict of loyalties. And it has also demonstrated (Br. pp. 12-14) that the States have been permitted to regulate the practice of the law in order to protect the integrity of the judicial process. *Law Students Civil Rights Research Council v. Wadmond*, 401 U.S. 154, 167 (1971), *aff'g* 299 F. Supp. 117, 125 (S.D. N.Y. 1969). Indeed, in the *Law Students* case, where an omnibus attack was launched against admission procedures and requirements, Mr. Justice STEWART took the pains to observe (p. 161):

"The appellants do not take issue with the citizenship

(footnote continued from preceding page)

the District Court for further proceedings in accordance with Judge WARREN's opinion, New York made no attempt on remand to litigate the question of the "compelling necessity" for its voting restriction since, as the Attorney General had pointed out to this Court, New York was already in the process of eliminating property qualifications from its various voting rights statutes (No. 258, Oct. Term, 1968, Attorney General's Brief, pp. 6, 14-15). In effect, therefore, in *Kramer*, this Court decided the case before it on a "compelling necessity" basis which had not been litigated and has remained *unlitigated*. Before this Court the appellant had, at most, urged "close judicial scrutiny" (App. Br., p. 7). Even the dissenting Judge in the District Court had, while employing more "stringent limitations on state power" (282 F. Supp. 70, 80), rejected the property qualification for voting as "arbitrary". (No. 258, Oct. Term, 1968; Appendix, p. 56; 282 F. Supp. 70, 79-84)

and minimum-residence requirements, nor with the items on the questionnaires for applicants dealing with these requirements".

We deem it both significant and persuasive that in the all-out attack made in *Law Students*, those plaintiffs did not see fit to attack New York's citizenship requirement. It implies a recognition, at least by those litigants, that membership in a state Bar was a "privilege and immunity" (a constitutional right) to which only citizens were entitled and not a "privilege" which "persons" who were non-citizens might seek.

Aliens have no *substantive right* to be members of a State bar. *United Public Workers v. Mitchell*, 330 U.S. 75, 101 (1947); *Theard v. United States*, 354 U.S. 278 (1957). Each State should be permitted to determine whether certain potential *conflicts of interest* prevent licensed professionals from properly performing their duties as functionaries of its Courts. *Theard v. United States* (*supra*, at p. 281).

The mere willingness to subscribe to a constitutional oath of office may reasonably be deemed inadequate to dispel doubts as to a potential conflict of interest of a Bar applicant who declines, in addition, to indicate a willingness to surrender her foreign citizenship or to embrace our own citizenship. See *Connell v. Higginbottom*, 403 U.S. 207, 208, 210 (1971); and *Knight v. Board of Regents*, 269 F. Supp. 339 (1967), *aff'd per curiam*, 390 U.S. 36 (1968) sustaining the requirement that public employees take a constitutional oath of office. Although an inquiry into philosophical or political beliefs may be proscribed (*Connell*, at p. 210), the States are not precluded from adopting legislation which prevents conflicts of interest. Indeed, this Court has found it necessary to adopt such standards to prevent conflicts of interest between federal judicial functions and the other activities of federal judges.

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New York, too, has deemed it essential, to prevent conflicts of interest among state officers, employees and even political party officers, to enact specific *prohibitions* against certain business or professional activities. New York Public Officers Law, §§ 73, 73-a (L. 1954, chs. 695 and 696, as amended).

Conclusion

Since the appellee has dealt so adequately with the appellant's allegations, of error, we shall not extend this brief further. We deem it sufficient to have stressed herein the lack of any *substantive* right on the part of any alien to practice law in any State court; the valid interest which any State has in the conduct of its judicial functions by citizens whose loyalty is undivided and who may not be subject to any questionable conflict of interests. Equal Protection, we submit, does not require extending to non-citizens all the "privileges and immunities" which are guaranteed to "citizens" alone by the very terms of the Fourteenth Amendment.

The judgment appealed from should be affirmed.

Dated: New York, New York, September 26, 1972.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Amicus Curiae

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

DANIEL M. COHEN
Assistant Attorney General
of Counsel

APPENDIX

N. Y. Judiciary Law, § 460 provides:

“§ 460. EXAMINATION AND ADMISSION OF ATTORNEYS

A citizen of the state, of full age, applying to be admitted to practice as an attorney or counsellor in the courts of record of this state, must be examined and licensed to practice as prescribed in this chapter. Race, creed, color, national origin or sex shall constitute no cause for refusing any person examination or admission to practice.”

N. Y. Judiciary Law, § 467, provides, in part:

“§ 467. REGISTRATION OF ATTORNEYS BEFORE BEGINNING TO PRACTICE

Every person who is hereafter duly licensed and admitted to practice as an attorney and counsellor-at-law in the courts of record of this state by an appellate division of the supreme court, shall subscribe and take and file an oath or affirmation which must be substantially in the following form, the blanks being properly filled before he begins or is entitled to begin to practice for another as an attorney and counsellor-at-law in the courts of this state:

State of New York, }
..... County. } ss.:

I,, being duly sworn (or affirmed) do depose and say that I am a natural born citizen of the United States (if naturalized, state when and where) and
• • •”

N. Y. CPLR 9406 provides, in part:

"R. 9406. Proof. No person shall receive said certificate from any committee and no person shall be admitted to practice as an attorney and counselor at law in the courts of this state, unless he shall furnish satisfactory proof to the effect:

1. that he believes in the form of the government of the United States and is loyal to such government;
2. that he is a citizen of the United States;"

N. Y. Court of Appeals Rule § 521.1 provides, in part:

"§ 521.1 Proof required by State Board of Law Examiners. An applicant for admission to the bar examination shall furnish to the State Board of Law Examiners proof satisfactory to said board:

- (a) as to his age, date of birth, and that he is over twenty-one years of age; and
- (b) as to place of birth; and
- (c) that he is a citizen of the United States; and"

N. Y. Court of Appeals Rule § 527.1 provides, in part:

"§ Section 527.1 General regulation. In its discretion the Appellate Division may admit to the bar and license to practice without examination a person who,

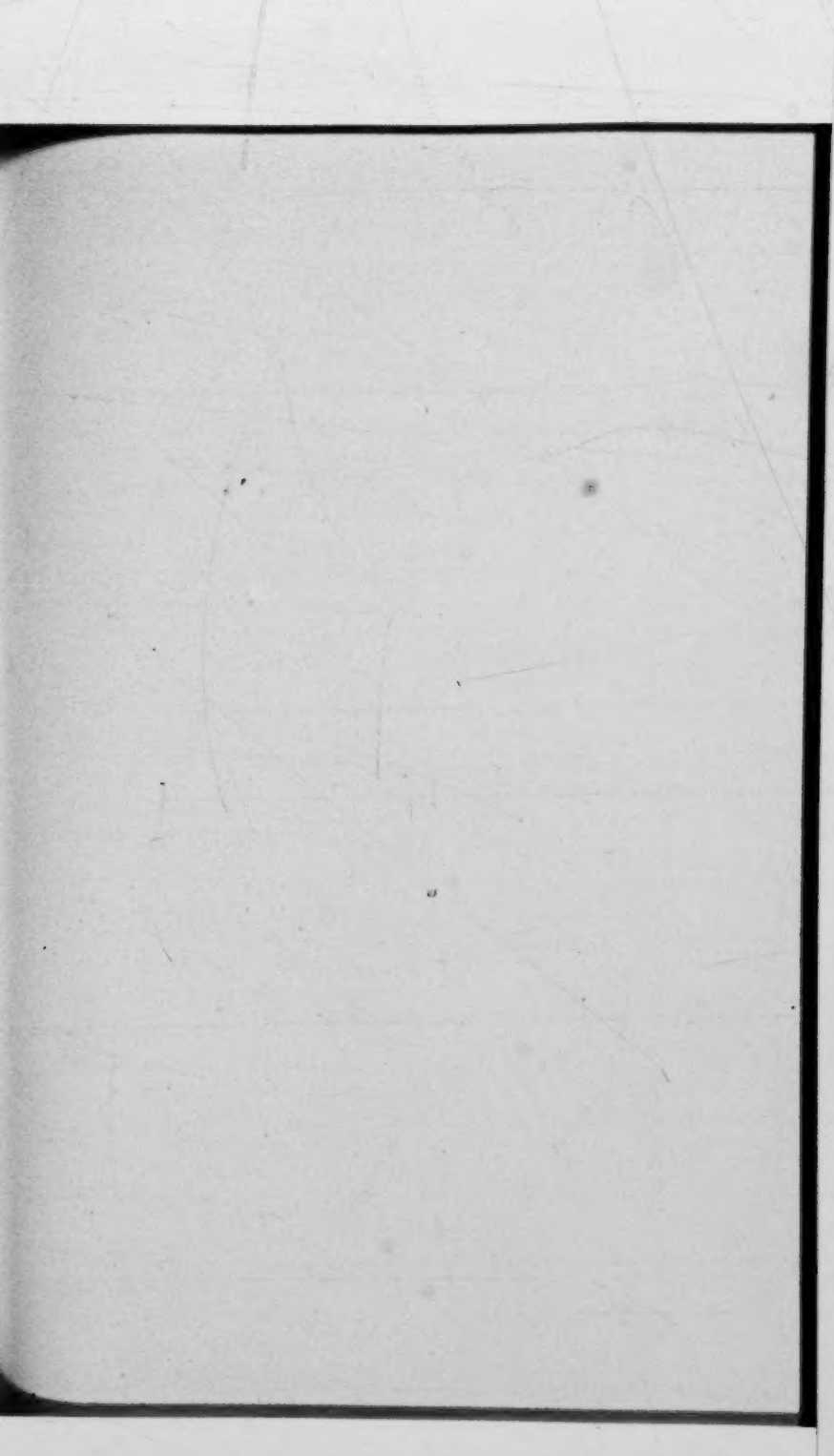
- (a) has been admitted to practice in the highest law court in any other State or territory of the United States or in the District of Columbia, or has been admitted to practice as an attorney and counselor at law or the equivalent in the highest court in another country whose jurisprudence is based upon the principles of the English common law; and

- (b)(1) while residing in such other country, State, territory or in the District of Columbia, or the commonly

used residential areas contiguous therewith, has actually practiced for a period of at least five years in its highest law court or highest court of original jurisdiction; or

(2) is a graduate of and has received a first degree in law from an approved law school as defined in section 523.2 and, for a period of at least five years immediately preceding his application, has been employed in this State or in any other State or territory of the United States or in the District of Columbia as a full-time member of the law faculty teaching in a law school or schools on the approved list of the American Bar Association and has attained the rank of professor, associate professor or assistant professor; and

(c) is a citizen of the United States; and"



NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

IN RE GRIFFITHS

APPEAL FROM THE SUPREME COURT OF CONNECTICUT

No. 71-1336. Argued January 9, 1973—Decided June 25, 1973

Applicant, a resident alien, was denied permission to take the Connecticut bar examination solely because of a citizenship requirement imposed by a state court rule, which the state courts upheld against applicant's constitutional challenge. *Held*: Connecticut's exclusion of aliens from the practice of law violates the Equal Protection Clause of the Fourteenth Amendment. Classifications based on alienage, being inherently suspect, are subject to close judicial scrutiny, and here the State through appellee bar committee has not met its burden of showing the classification to have been necessary to vindicate the State's undoubted interest in maintaining high professional standards. Pp. 6-10.

162 Conn. 249, 294 A. 2d 281, reversed and remanded.

POWELL, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, STEWART, WHITE, MARSHALL, and BLACKMUN, JJ., joined. BURGER, C. J., filed a dissenting opinion, in which REHNQUIST, J., joined. REHNQUIST, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

IN RE GRIFFITHS

APPEAL FROM THE SUPREME COURT OF CONNECTICUT

Argued January 8, 1973—Decided June 25, 1973

Respondent, a resident alien, was denied permission to take the Connecticut bar examination solely because of a minority citizenship imposed by a state court rule which the state courts refused to accept. The respondent's constitutional challenge, which was rejected by the state courts, was affirmed by the United States District Court for the District of Connecticut. The respondent appeals to the Supreme Court of the United States, claiming that the state court rule is unconstitutional because it denies him the right to take the bar examination and thus to practice law in Connecticut. The respondent also claims that the state court rule is unconstitutional because it denies him the right to take the bar examination and thus to practice law in Connecticut. The respondent also claims that the state court rule is unconstitutional because it denies him the right to take the bar examination and thus to practice law in Connecticut.

Justice Brennan, dissenting, said that the respondent's claim that the state court rule is unconstitutional because it denies him the right to take the bar examination and thus to practice law in Connecticut is not a claim of a constitutional right. He said that the respondent's claim is a claim of a state-law right, and that the state court rule is a state-law rule. He said that the state court rule is a state-law rule, and that the state court rule is a state-law rule. He said that the state court rule is a state-law rule, and that the state court rule is a state-law rule.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 71-1336

In re Application of Fre Le Poole Griffiths for Admission to the Bar, Appellant.		On Appeal from the Supreme Court of Connecticut.
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[June 25, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents a novel question as to the constraints imposed by the Equal Protection Clause of the Fourteenth Amendment on the qualifications which a State may require for admission to the bar. Appellant, Fre Le Poole Griffiths, is a citizen of the Netherlands who came to the United States in 1965, originally as a visitor. In 1967 she married a citizen of the United States and became a resident of Connecticut.¹ After her graduation from law school, she applied in 1970 for permission to take the Connecticut bar examination. The County Bar Association found her qualified in all respects save that she was not a citizen of the United States as required by Rule 8 (1) of the Connecticut Practice Book (1963),² and

¹ Appellant is eligible for naturalization by reason of her marriage to a citizen of the United States and residence in the United States for more than three years, 8 U. S. C. § 1430 (a). She has not filed a declaration of intention to become a citizen of the United States, 8 U. S. C. § 1445 (f), and has no present intention of doing so. Appellant's Brief, p. 4. In order to become a citizen, appellant would be required to renounce her citizenship of the Netherlands. 8 U. S. C. § 1448 (a).

² The rules are promulgated by the judges of the Superior Court, Conn. Gen. Stat. §§ 51-80, and administered by the Connecticut Bar Association. The position of the State in this case is represented by the State Bar Examining Committee.

on that account refused to allow her to take the examination. She then sought judicial relief, asserting that the regulation was unconstitutional but her claim was rejected first by the Superior Court and ultimately by the Connecticut Supreme Court. 162 Conn. 249, 294 A. 2d 281 (1972). We noted probable jurisdiction, 406 U. S. 966 (1972), and now hold that the rule unconstitutionally discriminates against resident aliens.³

I

We begin by sketching the background against which the State Bar Examining Committee attempts to justify the total exclusion of aliens from the practice of law. From its inception, our Nation welcomed and drew strength from the immigration of aliens. Their contributions to the social and economic life of the country were self-evident, especially during the periods when the demand for human resources greatly exceeded the native supply. This demand was by no means limited to the unskilled or the uneducated. In 1872, this Court noted that admission to the practice of law in the courts of a State

"in no sense depends on citizenship of the United States. It has not, as far as we know, ever been made in any State, or in any case, to depend on citizenship at all. Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal courts, who were not citizens of the United States or of any State." *Bradwell v. The State*, 16 Wall. 130, 139 (1872).⁴

³ Because we find that the rule denies equal protection, we do not reach appellant's other claims.

⁴ We do not, of course, rely on *Bradwell* to establish that admission to the bar may not be made to depend on citizenship. The holding of that case was simply that the right to practice law is not a "privilege or immunity" within the meaning of the Fourteenth Amendment.

But shortly thereafter, in 1879, Connecticut established the predecessor to its present rule totally excluding aliens from the practice of law. 162 Conn., at 253, 294 A. 2d, at 283. In subsequent decades, wide-ranging restrictions for the first time began to impair significantly the efforts of aliens to earn a livelihood in their chosen occupations.⁵

In the face of this trend, the Court nonetheless held in 1886 that a lawfully admitted resident alien is a "person" within the meaning of the Fourteenth Amendment's directive that a State must not "deny to any person within its jurisdiction the equal protection of the laws." *Yick Wo v. Hopkins*, 118 U. S. 356, 369 (1886). The decision in *Yick Wo* invalidated a municipal ordinance regulating the operation of laundries on the ground that the ordinance was discriminatorily enforced against Chinese operators. Some years later, the Court struck down an Arizona statute requiring employers of more than five persons to employ at least 80% "qualified electors or native-born citizens of the United States or some subdivision thereof." *Truax v. Raich*, 239 U. S. 33 (1915). As stated for the Court by Mr. Chief Justice Hughes:

"It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure. [Citations omitted.] If this could be refused solely upon the ground of race or nationality, the prohibition of the denial of equal protection of the laws would be a barren form of words." 239 U. S., at 41.

To be sure, the course of decisions protecting the employment rights of resident aliens has not been an un-

⁵ See J. Higham, *Strangers in the Land* 46, 161, 183 (2d ed. 1965). The full scale of restrictions imposed on the work opportunities of aliens in 1946 is shown by M. Konvitz, *The Alien and the Asiatic in American Law* 190-211 (1946).

swerving one.* In *Clarke v. Dekebach*, 274 U. S. 392 (1927), the Court was faced with a challenge to a city ordinance prohibiting the issuance to aliens of licenses to operate pool and billiard rooms. Characterizing the business as one having "harmful and vicious tendencies," the Court found no constitutional infirmity in the ordinance:

"It was competent for the city to make such a choice, not shown to be irrational, by excluding from the conduct of a dubious business an entire class rather than its objectionable members selected by more empirical methods." 274 U. S., at 397.

This easily expandable proposition supported discrimination against resident aliens in a wide range of occupations.⁷

But the doctrinal foundations of *Clarke* were undermined in *Takahashi v. Fish and Game Comm'n*, 334 U. S. 410 (1948), where, in ruling unconstitutional a California statute barring issuance of fishing licenses to persons "ineligible to citizenship," the Court stated that "the power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits." 334 U. S., at 420. Indeed, with the issue squarely before it in *Graham v. Richardson*, 403 U. S. 365 (1971), the Court concluded that:

"[C]lassifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny. Aliens as a class are a prime example of a 'discrete and insular'

* See also *People v. Crane*, 214 N. Y. 154, 108 N. E. 427, aff'd sub nom. *Crane v. New York*, 239 U. S. 195 (1915); but see *Graham v. Richardson*, 403 U. S. 365, 374 (1971).

⁷ See lower court cases collected at Note, Constitutionality of Restrictions on Aliens' Right to Work, 57 Col. L. Rev. 1012, 1021-1023 (1957) (restrictions ranging from the vending of soft drinks to the selling of lightning rods).

minority [see *United States v. Carolene Products Co.*, 304 U. S. 144, 152-153, n. 4 (1938)] for whom heightened judicial solicitude is appropriate." *Graham v. Richardson*, 403 U. S., at 372. (Footnotes omitted.)

The Court has consistently emphasized that a State which adopts a suspect classification "bears a heavy burden of justification," *McLaughlin v. Florida*, 379 U. S. 184, 196 (1964), a burden which, though variously formulated, requires the State to meet certain standards of proof. In order to justify the use of a suspect classification, a State must show that its purpose or interest is both constitutionally permissible⁹ and substantial,¹⁰ and that its use of the classification is "necessary to the accomplishment" of its purpose¹⁰ or the safeguarding of its interest.¹¹

Resident aliens, like citizens, pay taxes, support the economy, serve in the armed forces, and contribute in myriad other ways to our society. It is appropriate that a State bear a heavy burden when it deprives them of employment opportunities.

⁹ Discrimination or segregation for its own sake is not, of course, a constitutionally permissible purpose. *E. g.*, *Brown v. Board of Education*, 347 U. S. 483, 495 (1954); *McLaughlin v. Florida*, *supra*.

¹⁰ The state interest required has been characterized as "overriding," *McLaughlin v. Florida*, 379 U. S., at 196; *Loving v. Virginia*, 388 U. S. 1, 11 (1967), "compelling," *Graham v. Richardson*, 403 U. S., at 375, "important," *Dunn v. Blumstein*, 405 U. S. 330, 343 (1972), or "substantial," *ibid*. We attribute no particular significance to these variations in diction.

¹⁰ *McLaughlin v. Florida*, 379 U. S., at 196; *Loving v. Virginia*, 388 U. S., at 11.

¹¹ We did not decide in *Graham* nor do we decide here whether special circumstances, such as armed hostilities between the United States and the country of which an alien is a citizen, would justify the use of a classification based on alienage.

II

We hold that the Committee, acting on behalf of the State, has not carried its burden. The State's ultimate interest here implicated is to assure the requisite qualifications of persons licensed to practice law.¹² It is undisputed that a State has a constitutionally permissible and substantial interest in determining whether an applicant possesses "the character and general fitness requisite for an attorney and counselor at law." *Law Students Research Council v. Wadmond*, 401 U. S. 154, 159 (1970). See also *Konigsberg v. State Bar*, 366 U. S. 36, 40-41 (1961); *Schware v. Board of Bar Examiners*, 353 U. S. 232, 239 (1956).¹³ But no question is raised in this case as to appellant's character or general fitness. Rather, the sole basis for disqualification is her status as a resident alien.

The Committee defends Rule 8 (1)'s requirement that applicants for admission to the bar be citizens of the United States on the ground that the special role of the lawyer justifies excluding aliens from the practice of law. In Connecticut, the Committee points out, the maxim that a lawyer is an "officer of the court" is given concrete meaning by a statute which makes every lawyer a "commissioner of the Superior Court." As such, a

¹² Appellant denies that this was indeed the State's purpose in requiring citizenship for the practice of law, noting that citizenship is also required of practitioners in other fields, including hairdressers and cosmeticians, Conn. Gen. Stat. § 20-250, architects, Conn. Gen. Stat. § 20-291, and sanitarians, Conn. Gen. Stat. § 20-381. Because we dispose of the case on other grounds, we do not reach this claim.

¹³ In this connection, Mr. Justice Frankfurter wrote:

"From a professional charged with such responsibilities there must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as 'moral character.'" *Schware v. Board of Bar Examiners*, 353 U. S. 232, 247 (1957) (concurring opinion).

lawyer has authority to "sign writs and subpoenas, take recognizances, administer oaths and take depositions and acknowledgements of deeds." Conn. Gen. Stat. § 51-85. In the exercise of this authority, a Connecticut lawyer may command the assistance of a county sheriff or a town constable. Conn. Gen. Stat. § 52-90. Because of these and other powers, the Connecticut Supreme Court commented that:

"the courts not only demand [lawyers'] loyalty, confidence and respect, but also require them to function in a manner which will foster public confidence in the profession and, consequently, the judicial system." 162 Conn., at 262-263, 294 A. 2d, at 287.

In order to establish a link between citizenship and the powers and responsibilities of the lawyer in Connecticut, the Committee contrasts a citizen's undivided allegiance to this country with a resident alien's possible conflict of loyalties. From this, the Committee concludes that a resident alien lawyer might in the exercise of his functions ignore his responsibilities to the courts or even his clients in favor of the interest of a foreign power.

We find these arguments unconvincing. It in no way denigrates a lawyer's high responsibilities to observe that the powers "to sign writs and subpoenas, take recognizances, [and] administer oaths" hardly involve matters of state policy or acts of such unique responsibility as to entrust them only to citizens. Nor do we think that the practice of law offers meaningful opportunities adversely to affect the interest of the United States. Certainly the Committee has failed to show the relevance of citizenship to any likelihood that a lawyer will fail to protect faithfully the interest of his clients.¹⁴

¹⁴ Lawyers frequently represent foreign countries and the nationals of such countries in litigation in the courts of the United States, as well as in other matters in this country. In such representation, the duty of the lawyer, subject to his role as an "officer of

Nor would the possibility that some resident aliens are unsuited to the practice of law be a justification for a wholesale ban.

"Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory. Cf. *Yick Wo v. Hopkins*, 118 U. S. 356." *Schware v. Board of Bar Examiners*, 353 U. S., at 239.

This constitutional warning is especially salient where, as here, a State's bar admission standards make explicit use of a suspect classification. Although, as we have acknowledged, a State does have a substantial interest in the qualifications of those admitted to the practice of law, the arguments advanced by the Committee fall short of showing that the classification established by Rule 8 (1) of the Connecticut Practice Book (1963) is necessary to the promoting or safeguarding of this interest.

Connecticut has wide freedom to gauge on a case-by-case basis the fitness of an applicant to practice law. Connecticut can, and does, require appropriate training and familiarity with Connecticut law. Apart from such tests of competence, it requires a new lawyer to take both

the court," is to further the interests of his clients by all lawful means, even when those interests are in conflict with the interests of the United States or of a State. But this representation involves no conflict of interest in the invidious sense. Rather, it casts the lawyer in his honored and traditional role as an authorized but independent agent acting to vindicate the legal rights of a client, whoever it may be. It is conceivable that an alien licensed to practice law in this country could find himself in a position in which he might be called upon to represent his country of citizenship against the United States in circumstances in which there may be a conflict between his obligations to the two countries. In such rare situations, an honorable person, whether an alien or not, would decline the representation.

an "attorney's oath" to perform his functions faithfully and honestly¹⁵ and a "commissioner's oath" to "support the Constitution of the United States, and the Constitution of Connecticut."¹⁶ Appellant has indicated her willingness and ability to subscribe to the substance of both oaths,¹⁷ and Connecticut may quite properly conduct a character investigation to insure in any given case "that an applicant is not one who 'swears to an oath *pro forma* while declaring or manifesting his disagreement with or indifference to the oath.' *Bond v. Floyd*, 385 U. S. 116, 132." *Law Students Research Council v. Wadmond*, *supra*, 401 U. S., at 164.¹⁸ Moreover, once admitted to

¹⁵ The text of the attorney's oaths is as follows:

"You solemnly swear that you will do no falsehood, nor consent to any to be done in court, and, if you know of any to be done, you will give information thereof to the judges, or one of them, that it may be reformed; you will not wittingly, or willingly promote, sue or cause to be sued, any false or unlawful suit, or give aid, or consent, to the same; you will delay no man for lucre or malice; but will exercise the office of attorney, within the court wherein you may practice, according to the best of your learning and discretion, and with fidelity, as well to the court as to your client, so help you God." J. S. App., p. 44.

¹⁶ There is no question as to the validity of requiring an applicant, as a precondition to admission to the bar, to take such an oath. *Law Students Research Council v. Wadmond*, *supra*, at 161-164.

¹⁷ Because the commissioner's oath is an oath to "support the constitution of the United States, and the constitution of Connecticut, *so long as you continue to be a citizen thereof*" (emphasis added), appellant could not of course take the oath as prescribed. To the extent that the oath reiterates Rule 8 (1)'s citizenship requirement, it shares the same constitutional defects when required of prospective members of the bar.

¹⁸ We find no merit in the contention that only citizens can in good conscience take an oath to support the Constitution. We note that all persons inducted into the armed services, including resident aliens, are required by 10 U. S. C. § 502 to take the following oath:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and

the bar, lawyers are subject to continuing scrutiny by the organized bar and the courts. In addition to discipline for unprofessional conduct, the range of post-admission sanctions extends from judgments for contempt to criminal prosecutions and disbarment.¹⁹ In sum, the Committee simply has not established that it must exclude all aliens from the practice of law in order to vindicate its undoubted interest in high professional standards.²⁰

III

In its brief, the Examining Committee makes another, somewhat different argument in support of Rule 8 (1). Its thrust is not that resident aliens lack the attributes

allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God."

If aliens can take this oath when the Nation is making use of their services in the national defense, resident alien applicants for admission to the bar surely cannot be precluded, as a class, from taking an oath to support the Constitution on the theory that they are unable to take the oath in good faith.

¹⁹ See, e. g., *Doolittle v. Clark*, 47 Conn. 316 (1879). Apart from the courts, the profession itself has long subjected its members to discipline under codes or canons of professional ethics. As early as 1908 the American Bar Association adopted 32 Canons of Professional Ethics. In 1970, following several years of study and re-examination, the House of Delegates of the American Bar Association approved a new Code of Professional Responsibility, which provides detailed ethical prescriptions as well as a comprehensive code of disciplinary rules. The ABA Code of Professional Responsibility has since been approved and adopted in the District of Columbia and in 46 States, including Connecticut.

²⁰ Nothing in our rules prohibits from admission to practice in this Court resident aliens who have been admitted to practice "for three years past in the highest court of a State, Territory, District, Commonwealth, or Possession" and whose "private and professional characters shall appear to be good." Rule 5, Rules of the Supreme Court of the United States (1970).

necessary to maintain high standards in the legal profession, but rather that lawyers must be citizens almost as a matter of definition. The implication of this analysis is that exclusion of aliens from the legal profession is not subject to any scrutiny under the Equal Protection Clause.

The argument builds upon the exclusion of aliens from the franchise in all 50 States and their disqualification under the Constitution from holding office as President, Art. 2, § 1, cl. 4, or as a member of the House of Representatives, Art. 1, § 2, cl. 2, or of the Senate, Art. 1, § 3, cl. 3. These and numerous other federal and statutory and constitutional provisions reflect, the Committee contends, a pervasive recognition that "participation in the government structure as voters and office holders" is inescapably an aspect of citizenship. Appellee's Brief, p. 11. Offered in support of the claim that the lawyer is an "office holder" in this sense is an enhanced version of the proposition, discussed above, that he is an "officer of the court." Specifically, the Committee states that the lawyer "is an officer of the court who acts by and with the authority of the state" and is entrusted with the "exercise of actual government power." Appellee's Brief, p. 5.

We note at the outset that this argument goes beyond the opinion of the Connecticut Supreme Court, which recognized that a lawyer is not an officer in the ordinary sense. 162 Conn., at 254; 294 A. 2d, at 283. This comports with the view of the Court expressed by Mr. Justice Black in *Cammer v. United States*, 350 U. S. 399 (1956):

"It has been stated many times that lawyers are 'officers of the court.' One of the most frequently repeated statements to this effect appears in *Ex parte Garland*, 4 Wall. 333, 378. The Court pointed out there, however, that an attorney was not an 'officer'

within the ordinary meaning of that term. Certainly nothing that was said in *Ex parte Garland* or in any other case decided by this Court places attorneys in the same category as marshals, bailiffs, court clerks or judges. Unlike these officials a lawyer is engaged in a private profession, important though it be to our system of justice. In general he makes his own decisions, follows his own best judgment, collects his own fees and runs his own business. The word 'officer' as it has always been applied to lawyers conveys a different meaning from the word 'officer' as applied to people serving as officers within the conventional meaning of that term." (Footnote omitted.) 350 U. S., at 405.

Lawyers do indeed occupy professional positions of responsibility and influence that impose on them duties correlative with their vital right of access to the courts. Moreover, by virtue of their professional aptitudes and natural interests, lawyers have been leaders in government throughout the history of our country. Yet, they are not officials of government by virtue of being lawyers. Nor does the status of holding a license to practice law place one so close to the core of the political process as to make him a formulator of government policy.²¹

We hold that § 8 (1) violates the Equal Protection Clause.²² The judgment of the Connecticut Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

²¹ Because the Committee has failed to establish that the lawyer is an "office holder," we need not and do not decide whether there is merit in the general argument and, if so, to what offices it would apply.

²² In a thoughtful opinion, the California Supreme Court unanimously declared unconstitutional a similar California rule. *Raffaelli v. Committee of Bar Examiners*, — Cal. 3d —, 496 P. 2d 1284, 101 Cal. Rptr. 896 (1972). See also *Application of Park*, 484 P. 2d 690 (Alaska 1971).

SUPREME COURT OF THE UNITED STATES

No. 71-1336

In re Application of Fre Le Poole Griffiths for Admission to the Bar, Appellant.	On Appeal from the Supreme Court of Connecticut.
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[June 25, 1973]

MR. CHIEF JUSTICE BURGER, with whom MR JUSTICE REHNQUIST joins, dissenting.

I agree generally with MR. JUSTICE REHNQUIST's dissent and add a few observations.

In the rapidly shrinking "one world" we live in there are numerous reasons why the States might appropriately consider relaxing some of the restraints on the practice of professions by aliens. The fundamental factor, however, is that the States reserved, among other powers, that of regulating the practice of professions within their own borders. If that concept has less validity now than in the 18th Century when it was made part of the "bargain" to create a federal union, it is nonetheless part of that compact.

A large number of American nationals are admitted to the practice of law in more than a dozen countries; this will expand as world trade enlarges. But the question for the Court is not what is enlightened or sound *policy* but rather what the Constitution and its Amendments provide; I am unable to accord to the Fourteenth Amendment the expansive reading the Court gives it.

In recent years the Court, in a rather casual way, has articulated the code phrase "suspect classification" as though is embraced a reasoned constitutional concept. Admittedly, it simplifies judicial work as do "per se" rules, but it tends to stop analysis while appearing to suggest an analytical process.

Much as I agree with some aspects of the *policy* implicit in the Court's holding, I am bound—if I apply the Constitution as its words and intent speak to me—to reject the good policy the Court now adopts.

I am unwilling to accept what seems to me a denigration of the posture and role of a lawyer as an "officer of the court." It is that role that a State is entitled to rely on as a basis for excluding aliens from the practice of law. By virtue of his admission a lawyer is granted what can fairly be called a monopoly of sorts; he is granted a license to appear and try cases; he can cause witnesses to drop their private affairs and be called for depositions and other pretrial processes that, while subject to the ultimate control of the court, are conducted by lawyers outside courtrooms; the enormous power of cross-examination of witnesses is granted exclusively to lawyers. Inherent in these large powers is the ability to compel answers subject, of course, to such limiting restraints as the Fifth Amendment and rules of evidence. In most States a lawyer is authorized to issue subpoenas commanding the presence of persons and even the production of documents under certain circumstances. The broad monopoly granted to lawyers is the authority to practice a profession and by virtue of that to do things other citizens may not lawfully do. In the common law tradition the lawyer becomes the attorney—the *agent*—for a client only by virtue of his having been first invested with power by the State, usually by a court. The lawyer's obligations as an officer of the court permit the court to call on the lawyer to perform duties which no court could order citizens generally, including the obligation to observe codes of ethical conduct not binding on the public generally.

The concept of a lawyer as an officer of the court and hence part of the official mechanism of justice in the sense of other court officers, including the judge, albeit

with different duties, is not unique in our system but it is a significant feature of the lawyer's role in the common law. This concept has sustained some erosion over the years at the hands of cynics who view the lawyer much as the "hired gun" of the Old West. In less flamboyant terms the lawyer in this relation to the client came to be called a "mouth piece" in the gangland parlance of the 1930's. Under this bleak view of the profession the lawyer, once engaged, does his client's bidding, lawful or not, ethical or not.

Whatever the erosion of the officer-of-the-court role, the overwhelming proportion of the legal profession rejects both the denigrated role of the advocate and counselor that renders him a lackey to the client and the alien idea that he is an agent of government. See American Bar Association Project on Standards for Criminal Justice, The Prosecution Function and the Defense Function, § 1.1 (Tentative Draft 1970).

The role of a lawyer as an officer of the court predates the Constitution; it was carried over from the English system and became firmly embedded in our tradition. It included the obligation of first duty to client. But that duty never was and is not today an absolute or unqualified duty. It is a first loyalty to serve the client's interest but always within—never outside—the law, thus placing a heavy personal and individual responsibility on the lawyer. That this is often unenforceable, that departures from it remain undetected, and that judges and bar associations have been singularly tolerant of misdeeds of their brethren, renders it no less important to a profession that is increasingly crucial to our way of life. The very independence of the lawyer from the government on the one hand and client on the other is what makes law a profession, something apart from trades and vocations in which obligations of duty and conscience play a lesser part. It is as crucial to our

system of justice as the independence of judges themselves.

The history of the legal profession is filled with accounts of lawyers who risked careers by asserting their independent status in opposition to popular and governmental attitudes, as John Adams did in Boston to defend the soldiers accused in what we know in our folklore as the "Boston Massacre." To that could be added the lawyers who defended John Peter Zenger and down to lawyers in modern times in cases such as *Johnson v. Zerbst*, 304 U. S. 458 (1938). The crucial factor in all these cases is that the advocates performed their dual role—officer of the court and advocate for a client—strictly within and never in derogation of high ethical standards. There is thus a reasonable, rational basis for a State to conclude that persons owing first loyalty to this country will grasp these traditions and apply our concepts more than those who seek the benefits of American citizenship while declining to accept the burdens of citizenship in this country.

In some countries the legal system is so structured that all lawyers are literally agents of government and as such bound to place the interests of government over those of the client. That concept is so alien to our system with an independent bar that I find it difficult to see how nationals of such a country, inculcated with those ideas and at the same time unwilling to accept American citizenship, could be properly integrated to our system. At the very least we ought not stretch the Fourteenth Amendment to force the States to accept any national of any country simply because of a recital of the required oath and passing of the bar examination.

Since the Court now strikes down a power of the States accepted as fundamental since 1787, even if States sometimes elected not to exercise it, cf. *Bradwell v. The State*, 16 Wall. 130 (1872), the States may well move

to adopt, by statute or rule of court, a reciprocal proviso, familiar in other contexts; under such a reciprocal treatment of applicants a State would admit to the practice of law the nationals of such other countries as admit American citizens to practice. I find nothing in the core holding of *Zschernig v. Miller*, 389 U. S. 429 (1968), to foreclose state adoption of such reciprocal provisions. See *Clark v. Allen*, 331 U. S. 503 (1947).

OCTOBER TERM, 1961

JAMES H. HARRIS,

Petitioner.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF HABEAS CORPUS

in the United States Court of Appeals, Eighth Circuit.

ROBERT W. HARRIS,

Counsel for Petitioner.

422 South Main Street,

Clayton, Missouri 63103

Attorneys for Petitioner.